



IOWA ADMINISTRATIVE BULLETIN

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Pages 1157 to 1204

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through~~ letters indicate deleted material.

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Iowa Administrative Bulletin

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Prices for the Iowa Administrative Code and its Supplements are as follows:

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Legislative Services Agency
Capitol Building
Des Moines, IA 50319
Telephone: (515)281-3568

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

- 441 IAC 79 (Chapter)
- 441 IAC 79.1(249A) (Rule)
- 441 IAC 79.1(1) (Subrule)
- 441 IAC 79.1(1)“a” (Paragraph)
- 441 IAC 79.1(1)“a”(1) (Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

Schedule for Rule Making 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
Nov. 17	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
Dec. 15	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
16	Friday, January 16, 2004	February 4, 2004
17	Friday, January 30, 2004	February 18, 2004
18	Friday, February 13, 2004	March 3, 2004

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 1.5.3, to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, Third Floor West, Ola Babcock Miller Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

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To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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Community development block grants, 23.2, 23.4(4), 23.7(1) IAB 12/24/03 ARC 3033B (See also ARC 3031B)	First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	January 13, 2004 1:30 p.m.
CEBA—wage threshold requirements, 53.6(1) IAB 12/24/03 ARC 3032B (See also ARC 3030B)	Second Floor Northwest Conference Room 200 E. Grand Ave. Des Moines, Iowa	January 13, 2004 2 p.m.
Enterprise zones, 59.8 IAB 12/24/03 ARC 3035B	First Floor Northwest Conference Rm. 200 E. Grand Ave. Des Moines, Iowa	January 13, 2004 2:30 p.m.
Loan and credit guarantee program, ch 69 IAB 12/24/03 ARC 3034B	Main/ICN Conference Room 200 E. Grand Ave. Des Moines, Iowa	January 16, 2004 3 to 4 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Code of professional conduct and ethics, rescind chs 12, 13; adopt ch 25 IAB 1/7/04 ARC 3089B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 24, 2004 1 p.m.
Code of rights and responsibilities, adopt ch 26 IAB 1/7/04 ARC 3090B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 24, 2004 2 p.m.

EDUCATION DEPARTMENT[281]

Teacher quality—professional development, 83.6 IAB 12/10/03 ARC 2999B (ICN Network)	Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 7, 2004 1 to 3 p.m.
	NIACC 500 College Dr. Mason City, Iowa	January 7, 2004 1 to 3 p.m.
	Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	January 7, 2004 1 to 3 p.m.
	Southern Prairie AEA 2814 N. Court St. Ottumwa, Iowa	January 7, 2004 1 to 3 p.m.
	Great River AEA 3601 West Avenue Rd. Burlington, Iowa	January 7, 2004 1 to 3 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)
(ICN Network)

Keystone AEA 2310 Chaney Rd. Dubuque, Iowa	January 7, 2004 1 to 3 p.m.
Iowa Central Community College 916 N. Russell Storm Lake, Iowa	January 7, 2004 1 to 3 p.m.
Atlantic Middle School 1100 Linn St. Atlantic, Iowa	January 7, 2004 1 to 3 p.m.

ELDER AFFAIRS DEPARTMENT[321]

Adult day services programs, rescind chs 22 to 24, adopt ch 24 IAB 12/10/03 ARC 3002B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 9 to 11 a.m.
	Room 550 411 Third Street SE Cedar Rapids, Iowa	January 7, 2004 9 to 11 a.m.
	Room 211 Southwestern Iowa Comm. College 1501 West Townline Road Creston, Iowa	January 7, 2004 9 to 11 a.m.
	Fourth Floor Trospar-Hoyt County Service Bldg. 822 Douglas St. Sioux City, Iowa * Note change of address	January 7, 2004 * 9 to 11 a.m.
Assisted living programs, ch 25 IAB 12/10/03 ARC 3001B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 9 to 11 a.m.
	Room 550 411 Third Street SE Cedar Rapids, Iowa	January 7, 2004 9 to 11 a.m.
	Room 211 Southwestern Iowa Comm. College 1501 West Townline Road Creston, Iowa	January 7, 2004 9 to 11 a.m.
	Fourth Floor Trospar-Hoyt County Service Bldg. 822 Douglas St. Sioux City, Iowa * Note change of address	January 7, 2004 * 9 to 11 a.m.

ELDER AFFAIRS DEPARTMENT[321] (Cont'd)**(ICN Network)**

Monitoring, civil penalties, complaints and investigation for adult day services and assisted living programs; fees; elder group homes, chs 26, 27, 29 IAB 12/10/03 ARC 3000B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 9 to 11 a.m.
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ENVIRONMENTAL PROTECTION COMMISSION[567]

Animal feeding operations—health effects value and health effects standard for hydrogen sulfide, 20.2, adopt ch 32 IAB 1/7/04 ARC 3092B	Gateway North Center 1900 N. Grand Ave. Spencer, Iowa	February 17, 2004 7 p.m.
	Iowa Western Community College 906 Sunnyside Ln. Atlantic, Iowa	February 25, 2004 7 p.m.
	Public Library 225 Second St. SE Mason City, Iowa	March 3, 2004 6 p.m.
	Public Library 321 Main St. Davenport, Iowa	March 8, 2004 6:30 p.m.
	Public Library 3520 86th St. Urbandale, Iowa	March 11, 2004 7 p.m.
Emission guidelines and compliance schedules for commercial and industrial solid waste incineration units, 23.1(5) IAB 12/10/03 ARC 3005B	Musser Public Library 304 Iowa Ave. Muscatine, Iowa	January 16, 2004 1 p.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Identification of long-term care facility residents' eligibility for veterans' benefits, 58.12(1), 64.6, 65.10 IAB 1/7/04 ARC 3081B	Conference Room 319 Lucas State Office Bldg. Des Moines, Iowa	January 28, 2004 10 a.m.
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MEDICAL EXAMINERS BOARD[653]

Licensure of acupuncturists, 17.4(1), 17.5(3), 17.7, 17.8(1) IAB 12/24/03 ARC 3043B	Suite C 400 SW Eighth St. Des Moines, Iowa	January 13, 2004 3 p.m.
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NATURAL RESOURCE COMMISSION[571]

Boat motor regulations—Middle River State Park Lakes, 45.4(2) IAB 1/7/04 ARC 3093B	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 27, 2004 9 a.m.
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PUBLIC SAFETY DEPARTMENT[661]

Fire safety standards for adult day services programs, 5.5(2), 5.500, 5.510 IAB 12/10/03 ARC 2983B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 11 a.m.
	Room 550 411 Third Street SE Cedar Rapids, Iowa	January 7, 2004 11 a.m.
	Room 211 Southwestern Iowa Comm. College 1501 West Townline Road Creston, Iowa	January 7, 2004 11 a.m.
	Fourth Floor Trospar-Hoyt County Service Bldg. 822 Douglas St. Sioux City, Iowa * Note change of address	January 7, 2004 * 11 a.m.
Fire safety standards for assisted living facilities, 5.626 IAB 12/10/03 ARC 2984B (ICN Network)	Third Floor Conference Room Wallace State Office Building Des Moines, Iowa	January 7, 2004 11:30 a.m.
	Room 550 411 Third Street SE Cedar Rapids, Iowa	January 7, 2004 11:30 a.m.
	Room 211 Southwestern Iowa Comm. College 1501 West Townline Road Creston, Iowa	January 7, 2004 11:30 a.m.

PUBLIC SAFETY DEPARTMENT[661] (Cont'd)
(ICN Network)

	Fourth Floor Trospar-Hoyt County Service Bldg. 822 Douglas St. Sioux City, Iowa * Note change of address	January 7, 2004 * 11:30 a.m.
Fire fighting equipment revolving loan fund, 55.1 to 55.207 IAB 12/24/03 ARC 3051B	Fire Service Training Bureau 3100 Fire Service Road Ames, Iowa	February 5, 2004 11 a.m.

UTILITIES DIVISION[199]

Notice of generation siting waiver requests, 24.15 IAB 12/24/03 ARC 3064B	Hearing Room 350 Maple St. Des Moines, Iowa	January 27, 2004 10 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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**ADMINISTRATIVE SERVICES
DEPARTMENT[11]**

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2003 Iowa Acts, chapter 145, sections 4 and 61, the Department of Administrative Services hereby gives Notice of Intended Action to amend and transfer rules of the former Department of Personnel[581], Chapter 13, “Performance Review,” and Chapter 20, “Equal Employment Opportunity and Affirmative Action,” to the Department of Administrative Services[11], Chapter 62, “Performance Review,” and Chapter 68, “Equal Employment Opportunity and Affirmative Action,” Iowa Administrative Code.

The purpose of this proposed rule making is to comply with statutory changes enacted by the 80th General Assembly, 2003 Iowa Acts, chapter 145, and the Accountable Government Act. Differences between the original chapters and the transferred chapters include:

1. Adding language in Chapter 62, “Performance Review,” to comply with the focus on strategies and goals in the individual performance plan as required by the Accountable Government Act;

2. Revising language in Chapter 68, “Equal Employment Opportunity and Affirmative Action,” to replace the terminology “EEO-4 occupational categories” with “state and local government job categories” to match changes made by the Equal Employment Opportunity Commission in the Specifications for the Census 2000 Special EEO File; and

3. Chapter 68 has also been revised to remove the reference to the July 31 due date for agency affirmative action reports and plans, which will in effect give agencies more time to complete their reports while still allowing DAS to meet the September 30 deadline for reporting to the Governor and Legislature.

The Department will accept public comments on the proposed rules until 4:30 p.m. on January 27, 2004. Interested persons may submit written, oral or electronic comments to Carol Stratemeyer, Rules Administrator, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; or E-mail Carol.Stratemeyer@iowa.gov.

These amendments are intended to implement 2003 Iowa Acts, chapter 145, article 4, section 61; and Iowa Code chapters 8E and 19B.

The following amendments are proposed.

ITEM 1. Transfer **581—Chapter 13** to **11—Chapter 62** and **581—Chapter 20** to **11—Chapter 68**.

ITEM 2. Amend **11—Chapters 62** and **68** by replacing all references to Iowa Code chapter 19A with references to 2003 Iowa Acts, chapter 145, and by replacing all references to Chapter 13 and Chapter 20 with references to Chapter 62 and Chapter 68, respectively.

ITEM 3. Amend rule 11—62.1(80GA,ch145) as follows:

11—62.1(80GA,ch145) System established. The director shall establish, administer and maintain a uniform system of performance planning and ~~review~~ *evaluation* to be applied to all employees in the executive branch of state government, excluding board of regents employees, and shall prescribe forms and procedures for its use. *Such forms and procedures shall be in accordance with the accountable government Act pursuant to Iowa Code section 8E.207, subsection 2.* Appointing authorities shall determine and assign the job duties to be performed by employees.

ITEM 4. Amend subrule 62.2(1) and subrule 62.2(2), introductory paragraph, as follows:

62.2(1) Performance plan. The *individual* performance plan shall be based on the responsibilities, *strategies or goals* assigned during the rating period and shall include the standards or expectations, *including action steps, performance criteria, and timetables*, required for performance to be considered ~~competent~~ or as meeting job expectations. The *individual* performance plan shall be given to and discussed with the employee *at the start of the rating period*. Significant changes in responsibilities, standards or expectations that occur during the rating period shall be included in the *individual* performance plan, and a revised copy *shall be given to and discussed with the employee*.

62.2(2) Performance evaluation. A performance evaluation shall be prepared for each employee at least every 12 months. Additional evaluations may be prepared at the discretion of the supervisor. Ratings on the evaluation form ~~may~~ *are to be accompanied by descriptive comments supporting the ratings*. The evaluation may also include job-related comments concerning *achievements or areas of strength, areas for improvement, and training/development plans*. The supervisor or team shall discuss the evaluation with the employee and the employee shall be given the opportunity to attach written comments. Periods of service during educational leave required by the appointing authority, or military leave, shall be considered ~~competent (3.00)~~ or as meeting job expectations.

ITEM 5. Amend rule 11—62.3(80GA,ch145) as follows:

11—62.3(80GA,ch145) Copies of records. The employee shall receive a copy of each *individual* performance plan and ~~review~~ *evaluation*. The originals shall be retained by the employee’s agency in accordance with the policies of the department. The performance ~~review~~ *evaluation* and attachments are confidential records within the meaning of Iowa Code section 22.7, subsection 11.

ITEM 6. Amend **11—Chapter 62**, implementation clause, as follows:

These rules are intended to implement ~~Iowa Code section 19A.9 2003 Iowa Acts, chapter 145, section 61, and Iowa Code section 8E.207.~~

ITEM 7. Amend rule **11—68.1(19B)**, definition of “availability,” as follows:

“Availability” means the extent to which protected class members are qualified or qualifiable to be employed in classes within ~~EEO-4 occupational category~~ *state and local government job categories*.

ITEM 8. Amend rule **11—68.1(19B)**, definition of “EEO-4 occupational categories,” as follows:

“~~EEO-4 occupational~~ *State and local government job categories*” means officials and administrators, professionals, technicians, protective service workers, paraprofessionals, administrative support workers, skilled craft workers and

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

service maintenance workers, as defined by the federal Equal Employment Opportunity Commission guidelines.

ITEM 9. Amend subrule 68.2(2) as follows:

68.2(2) Each agency shall adhere to the provisions of the “State of Iowa Equal Opportunity, Affirmative Action and Anti-Discrimination Policy,” signed by the Governor on March 6, 1992 November 1, 2001.

ITEM 10. Amend subrule 68.3(2), introductory paragraph, as follows:

68.3(2) Work force analysis. A work force analysis shall show the numerical and percentile breakdown of the agency’s full-time employees, and other than full-time employees, separately by racial or ethnic minorities, sex, and disability. Full-time and other than full-time employees shall be arrayed according to the ~~EEO-4 occupational state and local government job~~ categories with further census occupational subcategory breakdowns as required by the director. For the purposes of confidentiality, disability shall be totaled only by an organizational unit covered by an individual affirmative action plan or the department as a whole.

ITEM 11. Amend subrule 68.3(3) as follows:

68.3(3) Availability analysis. An availability analysis shall show the percentile breakdown by racial or ethnic minorities and sex of the relevant labor force arrayed according to their ~~EEO-4 occupational state and local government job~~ categories and relevant subcategories. The analysis shall include an assessment of the relevant available labor force by using the geographic area from which work force recruitment can reasonably occur for each ~~EEO-4 occupational state and local government job~~ category. The geographic area will usually be larger for high-paid or high-ranked classifications for recruitment purposes. The labor force availability of disabled persons shall be based on census reports of persons with a work disability residing in the western section of the north central region of the United States as most relevant geographic area defined by the census bureau.

a. ~~Analysis method. The percentile breakdown by racial or ethnic minorities and sex shall be determined by:~~

(1) ~~The analysis method promulgated by OFCCP, 41 Code of Federal Regulations, Chapter 60, Revised Order No. 4, or~~

(2) ~~The report entitled Race, Sex, and Occupational Make-up of Iowa’s 1980 Labor Force, or other data sources approved by the department.~~

(3) a. ~~Exceptions. The department may grant exceptions only if an agency can document that its availability analysis is comparable to those provided by subparagraphs (1) and (2) above the requirements of this subrule. Exceptions may include the use of relevant national labor force data for the officials’ and administrators’ category.~~

b. ~~Organizational unit. An availability analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 20 68.3(2), paragraph “b.”~~

c. ~~Analysis report. The availability analysis shall be reported in a format prescribed by the department. In lieu of completing all parts of the availability analysis form, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, as part of its availability analysis, if approved by the department.~~

d. ~~Rescinded, IAB 9/21/88, effective 10/26/88.~~

ITEM 12. Amend subrule 68.3(4) as follows:

68.3(4) Quantitative utilization analysis. A quantitative utilization analysis shall compare work force analysis with availability analysis to show the numerical and percentile underrepresentation in the agency’s work force, if any, by racial or ethnic minorities, and sex, and disability.

a. ~~Rounding. All partial numerical figures for EEO-4 occupational state and local government job categories that contain .5 or more shall be rounded upward and .49 or less shall be rounded downward to the nearest whole number.~~

b. ~~Organizational unit. A quantitative utilization analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 20 68.3(2), paragraph “b.”~~

c. ~~Analysis report. The quantitative utilization analysis shall be reported in the format prescribed by the department. In lieu of completing all parts of the quantitative utilization analysis format, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, if approved by the department.~~

d. ~~Rescinded, IAB 9/21/88, effective 10/26/88.~~

ITEM 13. Amend subrule **68.3(6)**, paragraph “d,” subparagraph (4), as follows:

(4) Goals established for each occupational subcategory shall be totaled to establish goals for each ~~EEO-4 state and local government job~~ category.

ITEM 14. Amend subrule 68.3(7), introductory paragraph, as follows:

68.3(7) Consolidation. An agency may consolidate the racial or ethnic minorities and ~~EEO-4 occupational state and local government job~~ categories into broader groupings in conducting its analysis under subrules ~~20.3(2), 20.3(3), 20.3(4), 20.3(5), and 20.3(6)~~ 68.3(2) to 68.3(6) with department prior approval.

ITEM 15. Amend rule 11—68.5(19B) as follows:

11—68.5(19B) Reports.

68.5(1) Each agency shall annually submit an affirmative action report and plan for approval to the department by July 31 at the time specified by the department that shall conform to the standards specified in these rules.

68.5(2) Each agency shall may be required to submit a quarterly progress report reports in accordance with the due dates and procedures established by the director.

ITEM 16. Amend rule 11—68.6(19B) as follows:

11—68.6(19B) Discrimination complaints, including disability-related and sexual harassment complaints.

Each agency shall take proper and immediate action to investigate complaints of alleged discrimination. The director may investigate any discrimination complaint against an agency, negotiate a settlement to resolve a complaint, and order an appropriate disposition of a complaint that may include, but is not limited to, discharge, suspension, or reduction in rank or grade as defined in Iowa Code section 19A.9(16) 2003 Iowa Acts, chapter 145, section 61, and these rules. All information gathered in the course of an investigation, including, but not limited to, investigative reports prepared by the department, is confidential and shall not be released to persons outside the department unless the director deems such disclosure to be in the best interest of the state, or unless ordered by a court. This section does not supersede the remedies provided under Iowa Code chapter 216.

ARC 3079B**AGRICULTURE AND LAND
STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 159.5(11) and 215.24, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 85, “Weights and Measures,” Iowa Administrative Code.

The purpose of these proposed amendments is to update the rules to reflect changes in current practice and national standards, including updating references to NIST Handbooks 44, 130 and 133, to allow pitless livestock scales, and to make the moisture meter tolerances technically correct.

Any interested persons may make written comments or suggestions on these proposed amendments on or before 4:30 p.m. on January 27, 2004. Such written materials should be directed to Ronald R. Rowland, Director, Division of Consumer Protection and Animal Health, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to Ron.Rowland@idals.state.ia.us.

No waiver provision is included in these proposed amendments because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to these amendments.

These amendments are intended to implement Iowa Code chapters 214, 214A, 215, and 215A.

The following amendments are proposed.

ITEM 1. Rescind and reserve rules **21—85.2(215)** and **21—85.3(215)**.

ITEM 2. Rescind rule 21—85.5(215) and adopt the following new rule in lieu thereof:

21—85.5(215) “Counter scale” defined. A “counter scale” is a scale of any type which is especially adopted on account of its compactness, light weight, moderate capacity and arrangements of parts for use upon a counter, bench, or table.

ITEM 3. Amend rule 21—85.12(215), introductory paragraph, as follows:

21—85.12(215) Pitless scales for sand, limestone and coal. ~~The state of Iowa, department of agriculture and land stewardship, weights and measures division, will allow the installation of~~ *A person may install* pitless electronic, self-contained and vehicle scales in a permanent location provided the following conditions for the construction are incorporated, and usage is limited to nine months per year:

ITEM 4. Rescind and reserve rule **21—85.17(215)**.

ITEM 5. Rescind subrules **85.18(3)** to **85.18(7)**.

ITEM 6. Rescind and reserve rule **21—85.29(215)**.

ITEM 7. Amend rule 21—85.39(189,215) as follows:

21—85.39(189,215) Weights and measures. The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 amended or revised as of ~~January 1, 1995~~ *July 1, 2003*, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

The National Institute of Standards and Technology (NIST) Handbooks 130 and 133: Weights and Measures Law, Packaging and Labeling, Method of Sale, Type Evaluation and Checking the Net Contents of Packaged Goods, and all supplements, as promulgated by the National Institute of Standards and Technology amended or revised as of ~~January 1, 1995~~ *July 1, 2003*, are adopted in their entirety by this reference.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

ITEM 8. Amend rule 21—85.42(215) as follows:

21—85.42(215) Security seal. In accordance with the contemplated revision of ~~National Bureau of Standards Handbook 44~~ *National Institute of Standards and Technology Handbook 44*, Gur. 4.4 (Replacement of Security Seal), accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.

This rule is intended to implement Iowa Code section 215.12.

ITEM 9. Rescind and reserve subrule **85.48(11)**.

ITEM 10. Amend subrule 85.53(1) as follows:

85.53(1) The moisture-measuring device tested is found to be out of tolerance with the measuring device used by the department by one of the inspectors so assigned by more than ~~one-half of 1~~ *0.7* percent on grain under 20 percent moisture content.

ARC 3089B**EDUCATIONAL EXAMINERS
BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to rescind Chapter 12, “Criteria of Professional Practices,” and Chapter 13, “Criteria of Competent Performance,” and to adopt new Chapter 25, “Code of Professional Conduct and Ethics,” Iowa Administrative Code.

Chapter 25 is intended to replace Chapters 12 and 13 of the Board’s current rules, which were established in 1989 when the Board was recreated. The rules establish standards for ethical and professional conduct of all licensed practitioners. The Board has been engaged in statewide discussions of this

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

topic and has undertaken an extensive national review of each state's ethics and professional practices rules in an effort to modify and clarify its standards for ethical practice. The proposed new chapter includes definitions and language that more clearly convey to the profession the type of misconduct that is not acceptable to the Board.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, February 24, 2004, at 1 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments before 4 p.m. on Friday, February 27, 2004. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669. Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

These amendments are intended to implement Iowa Code section 272.2(1)"a."

The following amendments are proposed.

ITEM 1. Rescind and reserve **282—Chapters 12 and 13.**

ITEM 2. Adopt the following **new** chapter:

CHAPTER 25

CODE OF PROFESSIONAL CONDUCT AND ETHICS

282—25.1(272) Scope of standards. This code of professional conduct and ethics constitutes mandatory minimum standards of practice for all licensed practitioners as defined in Iowa Code chapter 272. The adherence to certain professional and ethical standards is essential to maintaining the integrity of the education profession.

282—25.2(272) Definitions. Except where otherwise specifically defined by law:

"Administrative and supervisory personnel" means any licensed employee such as superintendent, associate superintendent, assistant superintendent, principal, associate principal, assistant principal, or other person who does not have as a primary duty the instruction of pupils in the schools.

"Board" means the Iowa board of educational examiners.

"Discipline" means the process of sanctioning a license, certificate or authorization issued by the board.

"Ethics" means a set of principles governing the conduct of all persons governed by these rules.

"Fraud" means knowingly providing false information or representations on an application for licensure or employment, or knowingly providing false information or representations made in connection with the discharge of duties.

"License" means any license, certificate, or authorization granted by the board.

"Licensee" means any person holding a license, certificate, or authorization granted by the board.

"Practitioner" means an administrator, teacher, or other school professional, who provides educational assistance to students and who holds a license, certificate, or other authorization issued by the board.

"Responsibility" means a duty for which one is accountable by virtue of licensure.

"Right" means a power, privilege, or immunity secured to a person by law.

"Student" means a person, regardless of age, enrolled in a course of study at a prekindergarten through grade 12 school, who is receiving direct or indirect assistance from a person licensed by the board.

"Teacher" means any person engaged in the instructional program of prekindergarten through grade 12 children, including those engaged in teaching, administration, and supervision, and who are required by law to be licensed for the position held.

282—25.3(272) Standards of professional conduct and ethics. Licensees are required to abide by all federal, state, and local laws applicable to the fulfillment of professional obligations. Violation of federal, state, or local laws in the fulfillment of professional obligations constitutes unprofessional and unethical conduct which can result in disciplinary action by the board. In addition, it is hereby deemed unprofessional and unethical for any licensee to violate any of the following standards of professional conduct and ethics:

25.3(1) Standard I—conviction of crimes, sexual or other immoral conduct with or toward a student, and child and dependent adult abuse. Violation of this standard includes:

a. Fraud. Fraud in the procurement or renewal of a practitioner's license as defined in Iowa Code section 272.2(14)"b"(3).

b. Criminal convictions. The commission or conviction of a criminal offense as defined by Iowa law or the laws of any other state or of the United States, provided that the offense is relevant to or affects teaching or administrative performance.

(1) Disqualifying criminal convictions. The board shall deny an application for licensure and shall revoke a previously issued license if the applicant or licensee has been convicted of, has pled guilty to, or has been found guilty of the following criminal offenses, regardless of whether the judgment of conviction or sentence was deferred:

1. Any of the following forcible felonies included in Iowa Code section 702.11: child endangerment, assault, murder, sexual abuse, or kidnapping;

2. Any of the following criminal sexual offenses, as provided in Iowa Code chapter 709, involving a child:

- First-, second- or third-degree sexual abuse committed on or with a person who is under the age of 18;
- Lascivious acts with a child;
- Detention in a brothel;
- Assault with intent to commit sexual abuse;
- Indecent contact with a child;
- Sexual exploitation by a counselor;
- Lascivious conduct with a minor; or
- Sexual exploitation by a school employee;

3. Incest involving a child as prohibited by Iowa Code section 726.2;

4. Dissemination and exhibition of obscene material to minors as prohibited by Iowa Code section 728.2; or

5. Telephone dissemination of obscene material to minors as prohibited by Iowa Code section 728.15.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

(2) Other criminal convictions and founded child abuse. In determining whether a person should be denied a license or whether a licensee should be disciplined based upon any other criminal conviction or a founded report of physical or sexual abuse of a child, the board shall consider:

1. The nature and seriousness of the crime or founded abuse in relation to the position sought;
2. The time elapsed since the crime or founded abuse was committed;
3. The degree of rehabilitation which has taken place since the crime or founded abuse was committed;
4. The likelihood that the person will commit the same crime or abuse again;
5. The number of criminal convictions or founded abuses committed; and
6. Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

c. Sexual involvement or indecent contact with a student. Sexual involvement includes, but is not limited to, the following acts, whether consensual or nonconsensual: fondling or touching the inner thigh, groin, buttocks, anus or breasts of a student; permitting or causing to fondle or touch the practitioner's inner thigh, groin, buttocks, anus, or breasts; or the commission of any sex act as defined in Iowa Code section 702.17.

d. Sexual exploitation of a minor. The commission of or any conviction for an offense prohibited by Iowa Code section 728.12, Iowa Code chapter 709 or 18 U.S.C. Section 2252A(a)(5)(B).

e. Child or dependent adult abuse. Licensees shall maintain professional relationships with all students, both inside and outside the classroom. The following acts or behavior constitutes unethical conduct without regard to the existence of a criminal charge or conviction:

- (1) Committing any act of child abuse on a student;
- (2) Committing any act of dependent adult abuse on a dependent adult student;
- (3) Committing or soliciting any sexual or indecent act with a student or any minor;
- (4) Soliciting, encouraging, or consummating a romantic or inappropriate relationship with a student;
- (5) Furnishing alcohol or illegal or unauthorized drugs or drug paraphernalia to any student or knowingly allowing a student to consume alcohol or illegal or unauthorized drugs in the presence of the licensee; or
- (6) Failing to report any suspected act of child or dependent adult abuse as required by state law.

25.3(2) Standard II—alcohol or drug abuse. Violation of this standard includes:

- a. Being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming illegal or unauthorized drugs or abusing legal drugs.
- b. Being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming alcohol.

25.3(3) Standard III—misrepresentation, falsification of information. Violation of this standard includes:

a. Falsifying or deliberately misrepresenting or omitting material information regarding professional qualifications, criminal history, college credit, staff development credit, degrees, academic award, or employment history when applying for employment or licensure.

b. Falsifying or deliberately misrepresenting or omitting material information regarding compliance reports submitted to federal, state, and other governmental agencies.

c. Falsifying or deliberately misrepresenting or omitting material information submitted in the course of an official inquiry or investigation.

d. Falsifying any records or information submitted to the board in compliance with the license renewal requirements imposed under 282—Chapter 17.

e. Falsifying or deliberately misrepresenting or omitting material information regarding the evaluation of students or personnel, including improper administration of any standardized tests, including, but not limited to, changing test answers, providing test answers, copying or teaching identified test items, or using inappropriate accommodations or modifications for such tests.

25.3(4) Standard IV—misuse of public funds and property. Violation of this standard includes:

- a. Failing to account for funds collected that were entrusted to the practitioner in an educational context.
- b. Converting public property or funds to the personal use of the practitioner.
- c. Submitting fraudulent requests for reimbursement of expenses or for pay.
- d. Combining public or school-related funds with personal funds.
- e. Failing to use time or funds granted for the purpose for which they were intended.

25.3(5) Standard V—violations of contractual obligations.

a. Violation of this standard includes:

- (1) Executing a written professional employment contract while under contract with another school, school district, or area education agency.
- (2) Knowingly executing a written professional employment contract with a practitioner who is under current contract from which the practitioner has not been unconditionally released.
- (3) Abandoning a written professional employment contract without prior unconditional release by the employer.
- (4) As an employer, executing a written professional employment contract with a practitioner, which requires the performance of duties that the practitioner is not legally qualified to perform.
- (5) As a practitioner, executing a written professional employment contract which requires the performance of duties that the practitioner is not legally qualified to perform.

b. In addressing complaints based upon contractual obligations, the board shall consider factors beyond the practitioner's control. For purposes of enforcement of this standard, a practitioner will not be found to have abandoned an existing contract if:

- (1) The practitioner obtained a release from the employing board before discontinuing services under the contract; or
- (2) The practitioner provided notice to the employing board no later than the latest of the following dates:
 1. The practitioner's last work day of the school year;
 2. The date set for return of the contract;
 3. June 30; or
 4. Ten days following the completion of a collective bargaining agreement.

25.3(6) Standard VI—unethical practice toward other members of the profession, parents, students, and the community. Violation of this standard includes:

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

- a. Denying the student, without just cause, access to varying points of view.
- b. Deliberately suppressing or distorting subject matter for which the educator bears responsibility.
- c. Failing to make reasonable effort to protect the health and safety of the student or creating conditions harmful to student learning.
- d. Conducting professional business in such a way that the practitioner repeatedly exposes the student or other members of the profession to unnecessary embarrassment or disparagement.
- e. Engaging in any act of illegal discrimination, or otherwise denying a student participation in the benefits of any program on the grounds of race, color, religion, age, sex, disability, marital status, or national origin.
- f. Soliciting students or parents of students to purchase equipment, supplies, or services from the practitioner in private remunerative capacity for the practitioner's personal advantage.
- g. Accepting gifts from vendors or potential vendors where there may be the appearance of an actual conflict of interest.
- h. Disclosing confidential information, including, but not limited to, unauthorized sharing of information concerning student academic and disciplinary records, health and medical information, assessment or testing results, or family income. Licensees shall comply with state and federal laws and local school board policies relating to the confidentiality of student records, unless disclosure is required or permitted by law.
 - i. Refusing to participate in a professional inquiry when requested by the board.
 - j. Aiding, assisting, or abetting an unlicensed person in the completion of acts for which licensure is required.
 - k. Failing to self-report to the board, within 60 days of conviction, any conviction for a criminal offense, other than a parking or speeding violation, or any founded child abuse report.
 - l. Delegating assigned tasks to unqualified personnel.
 - m. Failing to comply with federal, state, and local laws applicable to the fulfillment of professional obligations.
 - n. Allowing another person to use one's practitioner license for any purpose.
 - o. Performing services beyond the authorized scope of practice for which the individual is licensed or prepared.
- 25.3(7) Standard VII—compliance with state law governing student loan obligations and child support obligations.** Violation of this standard includes:
 - a. Failing to comply with provisions of 282—Chapter 9 concerning repayment of student loans.
 - b. Failing to comply with 282—Chapter 10 concerning child support obligations.
- 25.3(8) Standard VIII—incompetence.** Violation of this standard includes, but is not limited to:
 - a. Willfully or repeatedly departing from or failing to conform to the minimum standards of acceptable and prevailing educational practice in the state of Iowa.
 - b. Willfully or repeatedly failing to practice with reasonable skill and safety.

These rules are intended to implement Iowa Code section 272.2(1)“a.”

ARC 3090B**EDUCATIONAL EXAMINERS BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to adopt new Chapter 26, “Code of Rights and Responsibilities,” Iowa Administrative Code.

In 1989, the Board developed a Canon of Rights and Responsibilities but did not adopt rules for this purpose. This new chapter is intended to outline a practitioner's rights and responsibilities in becoming a member of the profession.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, February 24, 2004, at 2 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rules. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed rules before 4 p.m. on Friday, February 27, 2004. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to anne.kruse@ed.state.ia.us, or by fax to (515)281-7669.

These rules are intended to implement Iowa Code section 272.2(1)“a.”

The following **new** chapter is proposed.

CHAPTER 26

CODE OF RIGHTS AND RESPONSIBILITIES

282—26.1(272) Purpose. The code of professional conduct and ethics in 282—Chapter 25* defines unprofessional and unethical conduct justifying disciplinary sanction. The board acknowledges that the discharge of professional obligations should occur in recognition of certain fundamental rights and responsibilities. Accordingly, the board recognizes the following rights and responsibilities of all educators licensed under Iowa Code chapter 272 and agrees that the exercise of these rights and responsibilities may present mitigating facts

*See **ARC 3089B** proposed herein.

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and circumstances in the board's evaluation of allegations of unprofessional or unethical conduct.

282—26.2(272) Rights. Educators licensed under Iowa Code chapter 272 have the following rights:

1. The educator has a right to be licensed and endorsed under professional standards established and enforced by the board.

2. The educator has a right to refuse assignments for which the educator is not legally authorized, in terms of holding a valid Iowa license with the appropriate endorsement(s) or approval(s).

3. The educator has a right, subject to board and administrator authority, to exercise professional judgment in the evaluation, selection, and use of teaching methods and instructional materials appropriate to the needs, abilities, and backgrounds of each student.

282—26.3(272) Responsibilities. Educators licensed under Iowa Code chapter 272 have the following responsibilities:

1. The educator who has unprivileged knowledge of a violation of the code of professional conduct and ethics by another educator shall assist in maintaining the integrity of the profession by promptly reporting the violation to the board.

2. The educator has a responsibility to maintain and improve the educator's professional competence.

3. The educator has a responsibility to accept only those assignments for which the educator is legally authorized.

4. The educator has a responsibility to provide conditions that are conducive to teaching and student learning.

5. The educator shall protect students from conditions harmful to learning or to health or safety.

6. The educator shall not, without just cause, restrain a student from independent action in the pursuit of learning and shall not, without just cause, deny a student access to varying points of view.

7. The educator shall not use professional relationships with students for private advantage.

8. The educator shall not discriminate against any student on the grounds of national or ethnic origin, religion, age, sex, disability, sexual orientation, or marital status, nor grant any discriminatory consideration or advantage.

9. The educator shall accord just and equitable treatment to all members of the profession.

10. The educator shall keep in confidence personally identifiable information regarding a student or the student's family members that has been obtained in the course of professional service, unless disclosure is required by law or is necessary for the personal safety of the student or others.

11. The educator who has reasonable basis to believe that a student has been abused, as defined by law, shall make all reports required by law and the Iowa Administrative Code and which are necessary to ensure the safety and well-being of the student.

12. In the administration of discipline, the educator shall treat all students with respect and in compliance with all policies of the school district served by the educator.

13. The educator shall provide accurate, truthful, and complete information to the board and to the local education system concerning all licensure transactions.

14. The educator shall not refuse to participate in a professional inquiry, when requested by the board.

15. The educator shall not require or direct another educator to violate any provisions of the code of professional conduct and ethics or any rights of a student, parent, educator or citizen.

16. The educator shall not delegate assigned tasks to unqualified personnel.

These rules are intended to implement Iowa Code section 272.2(1)"a."

ARC 3092B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.133 and 459.207, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," and to adopt new Chapter 32, "Health Effects Value (HEV)," Iowa Administrative Code.

The purpose of this rule making is to establish an animal feeding operations health effects value (HEV) and an animal feeding operations health effects standard (HES) for hydrogen sulfide. The value and standard are based on recommendations for ambient air quality standards contained in the Iowa Concentrated Animal Feeding Operations Air Quality Study (Final Report), February 2002, prepared by the Iowa State University and the University of Iowa Study Group. This report (hereafter referred to as the University Study) contains the following recommendations for hydrogen sulfide:

Hydrogen sulfide. It is recommended that hydrogen sulfide, measured at the concentrated animal feeding operation (CAFO) property line, not exceed 70 parts per billion (ppb) for a one-hour time-weighted average (TWA) period. In addition, the concentration at a residence or public use area shall not exceed 15 ppb, measured in the same manner as the property line. It is recommended that each CAFO have up to seven days (with 48 hours' notice) each calendar year when the CAFO is allowed to exceed the concentration for hydrogen sulfide.

Iowa Code section 459.207 directs the Department as follows:

459.207 Animal feeding operations—airborne pollutants control.

1. As used in this section, unless the context otherwise requires:

a. "Airborne pollutant" means hydrogen sulfide, ammonia, or odor.

b. "Separated location" means a location or object from which a separation distance is required under section 459.202 or 459.204, other than a public thoroughfare.

2. The department shall conduct a comprehensive field study to monitor the level of airborne pollutants emitted from animal feeding operations in this state, including but not limited to each type of confinement feeding operation structure.

3. a. After the completion of the field study, the department may develop comprehensive plans and programs for the abatement, control, and prevention of air-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

borne pollutants originating from animal feeding operations in accordance with this section. The comprehensive plans and programs may be developed if the baseline data from the field study demonstrates to a reasonable degree of scientific certainty that airborne pollutants emitted by an animal feeding operation are present at a separated location at levels commonly known to cause a material and verifiable adverse health effect. The department may adopt any comprehensive plans or programs in accordance with chapter 17A prior to implementation or enforcement of an air quality standard but in no event shall the plans and programs provide for the enforcement of an air quality standard prior to December 1, 2004.

b. Any air quality standard established by the department for animal feeding operations shall be based on and enforced at distances measured from a confinement feeding operation structure to a separated location. In providing for the enforcement of the standards, the department shall take all initial measurements at the separated location. If the department determines that a violation of the standards exists, the department may conduct an investigation to trace the source of the airborne pollutant. This section does not prohibit the department from entering the premises of an animal feeding operation in compliance with section 455B.103. The department shall comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

c. The department shall establish recommended best management practices, mechanisms, processes, or infrastructure under the comprehensive plans and programs in order to reduce the airborne pollutants emitted from an animal feeding operation.

d. The department shall provide a procedure for the approval and monitoring of alternative or experimental practices, mechanisms, processes, or infrastructure to reduce the airborne pollutants emitted from an animal feeding operation, which may be incorporated as part of the comprehensive plans and programs developed under this section.

Rationale for health effects value and health effects standard. A “health effects value” is defined as the level of an airborne pollutant commonly known to cause a material and verifiable adverse health effect. A “health effects standard” is defined as the level of an airborne pollutant required to initiate plans and programs to mitigate emissions of airborne pollutants. This rule making would establish a health effects value for hydrogen sulfide based on commonly known and accepted health risk data. The health effects value for hydrogen sulfide would be used to compare with the baseline data currently being collected in the field study mandated in Iowa Code section 459.207. The health effects value and health effects standard are intended to be used as a “bar” in evaluating the field study data. The HEV and HES would be applicable to animal feeding operations only.

Monitoring locations. In the discussion that follows, the acronym “PERRC” will be used to indicate a public use area, educational institution, residence, religious institution, or commercial enterprise (see Iowa Code section 459.102 for definitions of these terms).

As cited above, Iowa Code section 459.207 describes the conditions under which the Department may require new air pollution regulations based on the results of the field study:

“. . . comprehensive plans and programs may be developed if the baseline data from the field study demonstrates to a reasonable degree of scientific certainty that airborne pollutants emitted by an animal feeding operation are present at a separated location at levels commonly known to cause a material and verifiable adverse health effect.”

A broad interpretation of the term “separated location” in the statute would define any PERRC as a separated location. For example, any residence would be a separated location for the purpose of the field study. However, the Department has determined that this definition is inconsistent with the intent of the legislation and intends to construct a narrower interpretation with the present rule making.

In order to define this narrower interpretation of separated location, the Department must first indicate that the monitoring sites chosen will be chosen in rural locations near animal feeding operations that are located far from other sources of hydrogen sulfide emissions (such as wastewater treatment facilities). This requirement is consistent with the legislative directive received by the Department after nullification of the Department’s ambient standards rule, namely, that the intent of the legislation was to address concerns related to animal feeding operations only, and not to address emissions from all potential sources.

The next step required in the construction of the definition of the term “separated location” for this rule making is to define which instance of animal feeding operation construction or manure application will be used to designate a given PERRC as a separated location. For the purpose of this rule making, the closest animal feeding operation will be used for determining whether a potential site represents a separated location. Once the animal feeding operation that will be used to classify the site is specified, statutory separation distance requirements applicable to the construction of animal feeding operations may be used to determine whether the monitoring site may be used for the field study.

Having established how to determine which PERRCs represent separated locations for the purposes of the field study, the Department must next establish how the monitoring data may be used to determine whether the health effects standard is exceeded at a monitoring site. Hydrogen sulfide that is measured at a monitoring site will, in general, originate from animal feeding operations sources for which a separation distance is required under statute and for animal feeding operations sources for which no separation distance is required under the statute. For the purposes of determining compliance with the health effects standard, all data gathered at a separated location will be treated as valid data (if collected in accordance with the Iowa Air Sampling Manual). This is consistent with Iowa Code section 459.207, which states that “the department shall conduct a comprehensive field study to monitor the level of airborne pollutants emitted from animal feeding operations in this state.” This indicates that the animal feeding operations source of the emissions is irrelevant. It is also consistent with the limitations of the monitoring equipment, which cannot reliably distinguish the source of the emissions in all cases.

From the outset of the field study, the Department has indicated that its monitoring objective is to examine situations where the neighbors of animal feeding operations are subject to “worst-case” pollutant exposures. The rationale for examining worst-case exposures during the field study is based on the assumption that the public will find the Department’s decision not to develop comprehensive plans and programs for controlling emissions from animal feeding operations reasonable if monitors measure levels below commonly accepted health standards at locations where pollutant levels

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are likely to be highest. After the nullification of the ambient standards rule, the network monitoring objective changed from monitoring worst-case hydrogen sulfide and ammonia emissions anywhere in ambient air (at any location that is off the property owned by the animal feeding operation) to monitoring worst-case pollutant concentrations near PERRCs in close proximity to animal feeding operations. For the purposes of establishing monitoring sites for hydrogen sulfide and ammonia, worst-case exposures are assumed to occur near the largest animal feeding operations, with the assumption that, in the absence of controls, emissions are likely to be highest at locations where the number of animals is greatest.

The assumption that the field study monitoring measures worst-case exposures to airborne pollutants for Iowans living near animal feeding operations is crucial to the credibility of the field study. In this rule making, the Department adopts new restrictions on monitoring locations in an attempt to conform the field study more closely to the requirements of the statute.

To illustrate the difference between the broad interpretation of separated location (any PERRC) and the narrow interpretation of separated location proposed in this rule making, it may be instructive to consider the case of a residence located near an animal feeding operation. (NOTE: In this example, the term "construction" has been used for the sake of brevity, but is more properly replaced with "construction or expansion" in accordance with the statute.)

Under the narrow interpretation of a separated location, the Department may conduct monitoring near a residence provided that the residence was built before construction of a nearby animal feeding operation and statutory separation distance requirements were in place that were applicable to the animal feeding operation at the time it was constructed.

The Department may not conduct monitoring near a residence under the following conditions:

1. The residence was built before construction of a nearby animal feeding operation, but no statutory separation distance requirements were in place at the time the animal feeding operation was constructed. (Monitoring near "grandfathered" animal feeding operations is prohibited.)
2. The residence was built before construction of a nearby animal feeding operation, and statutory separation distance requirements were in place but were not applicable to the animal feeding operation at the time it was constructed. (Monitoring near animal feeding operations that were excluded from separation distance requirements under the statute is prohibited.)
3. The residence was built before construction of a nearby animal feeding operation, and statutory separation distance requirements were in place that were applicable to the animal feeding operation at the time it was constructed, but the resident signed a waiver letter allowing construction of the animal feeding operation. (Monitoring near "waivered" residences is prohibited.)
4. The residence was built before construction of a nearby animal feeding operation, and statutory separation distance requirements were in place that were applicable to the animal feeding operation at the time it was constructed, but the animal feeding operation did not comply with these separation distance requirements. (Monitoring near animal feeding operations that are out of compliance with the separation distance requirements under the statute is prohibited.)
5. The residence was built after construction of a nearby animal feeding operation, and statutory separation distance requirements were in place that were applicable to the animal feeding operation at the time it was constructed. (Monitoring

is prohibited if the animal feeding operation was constructed before the residence was constructed.)

From this analysis, it is clear that adoption of the narrow interpretation of the definition of "separated location" will reduce the number of possible PERRCs that can be included in the field study. Many of the larger animal feeding operations in the state were constructed according to the separation distance requirements contained in Iowa Code section 455B.134. It appears that these requirements were inadvertently excluded from Iowa Code section 459.202. To the extent that Iowa Code section 459.202 is likely to be revised to include these older requirements, the adoption of the narrow interpretation of the definition of "separated location" in this rule making will not prevent the Department from conducting a field study that includes PERRCs located in the vicinity of larger animal feeding operations. Therefore, adoption of the narrow interpretation of separated location for the purpose of siting monitors for the field study will not prevent the Department from investigating locations where worst-case emissions are likely to be present.

The hydrogen sulfide HEV and HES are consistent with Iowa Code section 459.207, in that they establish values to be used in determining whether or not harmful concentrations of hydrogen sulfide from animal feeding operations exist at separated locations. Thus, the HEV and HES ensure that data gathered from the field study will be used for their intended purposes. The HEV and HES apply solely at separated locations and are not intended for use as an ambient air standard.

The level of the animal feeding operation HEV for hydrogen sulfide is consistent with recommendations in the University Study. The HEV mirrors the recommended value for an ambient air quality standard (15 ppb) and maintains the one-hour averaging period. The HES adopts the Study Group's recommendations for allowing the standard to be exceeded seven times in a year. Although the University Study recommends a bifurcated approach (separate standards for fence line and separated locations), Iowa Code section 459.207 states that "any air quality standard established by the department for animal feeding operations shall be based on and enforced at distances measured from a confinement feeding operation structure to a separated location." To implement the mandates of Iowa Code section 459.207, the Department is not proposing to establish an HEV and HES for fence line areas at this time, as recommended in the University Study.

Provisions for triggering plans and programs. Iowa Code section 459.207 states that "after the completion of the field study, the department may develop comprehensive plans and programs for the abatement, control, and prevention of airborne pollutants originating from animal feeding operations in accordance with this section. The comprehensive plans and programs may be developed if the baseline data from the field study demonstrates to a reasonable degree of scientific certainty that airborne pollutants emitted by an animal feeding operation are present at a separated location at levels commonly known to cause a material and verifiable adverse health effect." Since an "airborne pollutant" is defined in Iowa Code section 459.207 as hydrogen sulfide, ammonia, or odor, measurements of any one of these pollutants at a separated location at levels known to cause a material or verifiable adverse health effect would provide the trigger needed to begin the development of comprehensive plans and programs to abate, control, or prevent the emission of airborne pollutants from an animal feeding operation.

This rule making specifies the conditions for the development of additional air pollution control programs for animal

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feeding operations based on the results of the mandated field study. The conditions are met when the daily maximum one-hour hydrogen sulfide concentration of 15 ppb, as measured at a separated location, is exceeded eight times in one calendar year.

Iowa Code section 459.207 directs that “the department shall establish recommended best management practices, mechanisms, processes, or infrastructure under the comprehensive plans and programs in order to reduce the airborne pollutants emitted from an animal feeding operation.” If the conditions that would trigger the development of plans and programs are met, development of best management practices, mechanisms, processes, or infrastructure will initially be completed through consultations with work groups. The Department plans to convene several work groups to solicit input from technical experts in the areas of dispersion modeling, emissions characterizations, and best management practices.

Iowa Code section 459.207 states that “the department may adopt any comprehensive plans or programs in accordance with chapter 17A prior to implementation or enforcement of an air quality standard but in no event shall the plans and programs provide for the enforcement of an air quality standard prior to December 1, 2004.”

To maintain consistency with the enforcement provisions in Iowa Code section 459.207, this rule making includes a provision that additional air pollution controls that may result from the development of plans and programs shall not be implemented prior to December 1, 2004.

Consistency with National Academy of Sciences report. In February 2003, the National Academy of Sciences (NAS) issued a final report entitled Air Emissions from Animal Feeding Operations: Current Knowledge, Future Needs. In this report, the authors came to consensus on 13 major findings and associated recommendations. Among these findings is support for the Department’s current approach of establishing an HEV for hydrogen sulfide.

The NAS report states that hydrogen sulfide is a significant pollutant of concern on a local scale and may have effects on the quality of life of nearby residents. The NAS report also states that “the aim is to control ambient concentrations at the farm boundary and/or nearest occupied dwelling” for pollutants of local concern (hydrogen sulfide) and that “standards applicable to the farm boundary and/or nearest occupied dwelling must be developed.” This rule making is consistent with the recommendations for hydrogen sulfide found in the NAS report.

Periodic review. As new data become available regarding emissions from animal feeding operations and their impact on the environment, these data should be reviewed for applicability to the HEV and HES for hydrogen sulfide. Therefore, the Department will review the HEV and HES every five years and incorporate the latest scientific research as applicable.

Iowa Air Sampling Manual. This rule making establishes an Iowa Air Sampling Manual, which will be adopted by reference in 567—Chapter 32. This manual contains monitor siting requirements, data handling procedures, approved monitoring methods and equipment, quality assurance requirements, and requirements for public availability of data required to implement the HEV and HES for hydrogen sulfide. The manual will not be published in the Iowa Administrative Code, but will be available from the Department upon request.

A Technical Advisory Group (TAG) consisting of stakeholders and experts in the field of ambient air monitoring was

formed to assist with determining monitoring instrumentation and methodology for the concentrated animal feeding operation (CAFO) comprehensive field study mandated in Iowa Code section 459.207. The group meetings provided attendees a chance to offer recommendations and to suggest alternative methods or approaches to the Department. TAG meetings were held on June 11, 2002, and June 25, 2002, at the Air Quality Bureau. There was consensus among the TAG members that the method for measuring hydrogen sulfide proposed by the Department, which is the basis for compliance monitoring in other agricultural states, represents the best monitoring method currently available to conduct a field study for this pollutant.

Overview. Item 1 adds new definitions of “health effects value,” “health effects standard” and “separated location” to rule 567—20.2(455B).

Item 2 adopts new Chapter 32 and establishes a health effects value for hydrogen sulfide, establishes conditions for the development of additional air pollution control programs based on the results of the field study mandated in Iowa Code section 459.207, and requires that hydrogen sulfide be measured using the methods and procedures indicated in the Department’s sampling manual. The HEV and HES are to be used as a “bar” to evaluate data obtained in the animal feeding operations field study to determine if a material and verifiable adverse health effect exists at a separated location.

Any interested person may make written suggestions or comments on these proposed amendments prior to April 4, 2004. Written comments or suggestions should be directed to Bryan Bunton, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515)242-5094; or sent by electronic mail to bryan.bunton@dnr.state.ia.us.

An informational meeting was held from 1 to 3 p.m. on December 12, 2003, in the conference rooms of the Air Quality Bureau of the Department of Natural Resources. At the informational meeting, Department staff answered questions about the proposed rule making.

Five public hearings will be held. The dates, locations and times of these hearings are as follows:

February 17, 2004, at 7 p.m., Iowa Lakes Community College, Gateway North Center, 1900 North Grand Avenue, Spencer.

February 25, 2004, at 7 p.m., Iowa Western Community College, 906 Sunnyside Lane, Atlantic.

March 3, 2004, at 6 p.m., Mason City Public Library, 225 2nd Street SE, Mason City.

March 8, 2004, at 6:30 p.m., Davenport Public Library, 321 Main Street, Davenport.

March 11, 2004, at 7 p.m., Urbandale Public Library, 3520 86th Street, Urbandale.

Comments may be submitted orally or in writing during the public hearings. All comments must be received no later than April 8, 2004. Any person who intends to attend a public hearing and has special requirements, such as those related to hearing or mobility, should contact Bryan Bunton at (515)281-6729 to advise of any specific needs.

These amendments are not subject to waiver.

These amendments are intended to implement Iowa Code sections 455B.133 and 459.207.

The following amendments are proposed.

ITEM 1. Amend rule **567—20.2(455B)** by adopting the following **new** definitions in alphabetical order:

“Health effects standard” means the level of an airborne pollutant required to trigger plans and programs to abate emissions of airborne pollutants.

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“Health effects value” means the level of an airborne pollutant commonly known to cause a material and verifiable adverse health effect.

“Separated location” means a location or object from which a separation distance is required under 567—subrules 65.3(3) and 65.11(1), other than a public thoroughfare.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 32
HEALTH EFFECTS VALUE (HEV)

567—32.1(455B) Health effects value for hydrogen sulfide.

32.1(1) The animal feeding operation (as defined in 567—65.1(455B)) health effects value for hydrogen sulfide is 15 ppb, daily maximum one-hour average as measured near a separated location.

32.1(2) Health effects standard for hydrogen sulfide. The animal feeding operation (as defined in 567—65.1(455B)) health effects standard for hydrogen sulfide is 15 ppb, daily maximum one-hour average, not to be exceeded more than seven times per year, as measured near a separated location.

567—32.2(455B) Conditions for development of additional air pollution control programs based on the results of the animal feeding operations field study.

32.2(1) For purposes of the field study, comprehensive plans and programs may be developed if the baseline data from the field study demonstrate to a reasonable degree of scientific certainty that hydrogen sulfide emitted by an animal feeding operation (as defined in 567—65.1(455B)) is present at a separated location at levels exceeding the health effects standard.

32.2(2) Additional air pollution controls included in comprehensive plans and programs shall not be implemented prior to December 1, 2004.

567—32.3(455B) Iowa Air Sampling Manual. Monitor siting requirements, data handling procedures, approved monitoring methods and equipment, quality assurance requirements, and requirements for public availability of the data for determining compliance with the animal feeding operations health effects value for hydrogen sulfide shall be in accordance with the “Iowa Air Sampling Manual*” adopted by the commission on [date to be inserted] and adopted by reference herein.

These rules are intended to implement Iowa Code sections 455B.133 and 459.207.

*Available from the department.

ARC 3073B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter

185, “Rehabilitative Treatment Services,” Iowa Administrative Code.

These amendments change the requirements for provision of therapy and counseling in various levels of rehabilitative treatment group care service and describe how overpayments are calculated.

The current rules applicable to rehabilitative treatment services contracts specify that a provider bill the Department on a monthly basis. However, the requirements for group foster care services provide for an average weekly therapy and counseling requirement, the amount of which is dependent upon the level of care (community, comprehensive or enhanced).

In Boys and Girls Home and Family Services, Inc. v. State of Iowa Department of Human Services, No. 3-139/02-0866, June 13, 2003, the Iowa Court of Appeals determined that a formula of only full-week periods consisting of more than one week (i.e., periods of 14, 21 or 28 days) should be used to determine whether a provider is in compliance with the therapy and counseling requirements for rehabilitative treatment and supportive services contracts. The Department issued audit guidelines on September 2, 2003, to comply with the decision of the Iowa Court of Appeals.

These amendments clarify the therapy and counseling requirements and their application upon audit by changing the therapy and counseling requirement for group foster care services from a weekly requirement to a calendar monthly requirement, based upon the total number of service days payable to the provider during the calendar month. The amendments also abandon the concept of “contiguous day periods” used in the September 2, 2003, audit guidelines.

Under these amendments, the number of hours of therapy and counseling required to be provided is determined based only upon the number of service days payable to the provider and the level of care (community, comprehensive, or enhanced). Therapy and counseling services and skill development can be provided on any day during the calendar month that the child is present in the facility. A child is considered “present” in a facility if the child is in the facility for at least a portion of the day. Therapy and counseling services may be provided in a setting other than the facility. These amendments will be applied when the Department initiates any rehabilitative treatment and supportive services billing audits on or after December 1, 2003.

Since rehabilitative treatment services are subject to Medicaid coverage and audit requirements, the Department is submitting these policies to the Center for Medicare and Medicaid Services (CMS) for review. While these changes do not require a Medicaid State Plan amendment, CMS approval is required to ensure that there is not a negative fiscal impact on the state.

There are no waiver provisions specifically in these amendments. Individuals may request a waiver under the Department’s general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 3078B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before January 28, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code sections 234.6 and 234.38.

ARC 3081B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 58, "Nursing Facilities," Chapter 64, "Intermediate Care Facilities for the Mentally Retarded," and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

The proposed amendments implement changes made to the admission procedures for certain long-term care facilities as required by 2003 Iowa Acts, chapter 112, section 2, as amended by 2003 Iowa Acts, chapter 179, section 160. The proposed amendments require long-term care facilities receiving reimbursement through the Medicaid program to assist the Iowa Commission on Veterans Affairs in identifying residents' eligibility or potential eligibility for benefits through the federal Department of Veterans Affairs. The proposed amendments stipulate that they do not apply to individuals admitted to a state mental health institute for acute psychiatric care.

The proposed amendments were presented to the State Board of Health for initial review at the Board's November 12, 2003, meeting.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 27, 2004. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail may be sent to david.werning@dia.state.ia.us.

Also, there will be a public hearing on January 28, 2004, at 10 a.m. in Conference Room 319 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department and advise of specific needs.

These amendments are intended to implement 2003 Iowa Acts, chapter 112, section 2, as amended by 2003 Iowa Acts, chapter 179, section 160.

The following amendments are proposed.

ITEM 1. Amend subrule **58.12(1)** by adding the following **new** paragraph "P":

1. For all residents residing in a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A on July 1, 2003, and all

others subsequently admitted, the facility shall collect and report information regarding the resident's eligibility or potential eligibility for benefits through the federal Department of Veterans Affairs as requested by the Iowa commission on veterans affairs. The facility shall collect and report the information on forms and by the procedures prescribed by the Iowa commission on veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services. In the event that a resident is unable to assist the facility in obtaining the information, the facility shall seek the requested information from the resident's family members or responsible party.

For all new admissions, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 30 days of the resident's admission. For residents residing in the facility as of July 1, 2003, and prior to the effective date of this paragraph, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 90 days of the effective date of this paragraph.

If a resident is eligible for benefits through the federal Department of Veterans Affairs or other third-party payor, the facility shall seek reimbursement from such benefits to the maximum extent available before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

The provisions of this paragraph shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care. (II, III)

ITEM 2. Amend 481—Chapter 64 by adding the following **new** rule:

481—64.6(135C) Veteran eligibility.

64.6(1) For all residents residing in a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A on July 1, 2003, and all others subsequently admitted, the facility shall collect and report information regarding the resident's eligibility or potential eligibility for benefits through the federal Department of Veterans Affairs as requested by the Iowa commission on veterans affairs. The facility shall collect and report the information on forms and by the procedures prescribed by the Iowa commission on veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services. In the event that a resident is unable to assist the facility in obtaining the information, the facility shall seek the requested information from the resident's family members or responsible party.

64.6(2) For all new admissions, the facility shall collect and report the required information regarding a resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 30 days of the resident's admission. For residents residing in the facility as of July 1, 2003, and prior to the effective date of this subrule, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 90 days of the effective date of this subrule.

64.6(3) If a resident is eligible for benefits through the federal Department of Veterans Affairs or other third-party payor, the facility shall seek reimbursement from such benefits to the maximum extent available before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

64.6(4) The provisions of this rule shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care. (II, III)

ITEM 3. Amend rule **481—65.10(135C)** by adding the following **new** numbered paragraph **“10”**:

10. For all residents residing in a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A on July 1, 2003, and all others subsequently admitted, the facility shall collect and report information regarding the resident's eligibility or potential eligibility for benefits through the federal Department of Veterans Affairs as requested by the Iowa commission on veterans affairs. The facility shall collect and report the information on forms and by the procedures prescribed by the Iowa commission on veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services. In the event that a resident is unable to assist the facility in obtaining the information, the facility shall seek the requested information from the resident's family members or responsible party.

For all new admissions, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 30 days of the resident's admission. For residents residing in the facility as of July 1, 2003, and prior to the effective date of this paragraph, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 90 days of the effective date of this paragraph.

If a resident is eligible for benefits through the federal Department of Veterans Affairs or other third-party payor, the facility shall seek reimbursement from such benefits to the maximum extent available before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

The provisions of this paragraph shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care. (II, III)

ARC 3093B**NATURAL RESOURCE
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 462A.3, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 45, “Boat Motor Regulations,” Iowa Administrative Code.

This proposed amendment would add Middle River State Park Lakes in Warren County to the list of artificial lakes under 100 acres in size with unlimited boat motor size and no-wake speed.

Any interested person may make written comments on this proposed amendment on or before January 27, 2004. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wal-

lace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally should contact Steve Dermand of the Law Enforcement Bureau at (515)281-4515.

A public hearing will be held on January 27, 2004, at 9 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code section 462A.31.

The following amendment is proposed.

Amend subrule **45.4(2)** by adopting the following **new** paragraph in alphabetical order:

Middle River State Park Lakes, Warren County—motor boats of outboard or inboard/outdrive type and unrestricted horsepower at no-wake speed.

ARC 3067B**SECRETARY OF STATE[721]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 47.1 and Section 302 of the Help America Vote Act of 2002 (Pub. L. 107-252) (HAVA), the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

This amendment is intended to implement Iowa Code section 47.1 and Section 302 of the Help America Vote Act of 2002 (Pub. L. 107-252) (HAVA). Iowa Code section 47.1 requires the State Commissioner of Elections (Secretary of State) to promulgate rules regarding election emergency situations. Iowa's HAVA state plan provides that the State Commissioner of Elections will promulgate administrative rules to implement Section 302(c), which requires that any person who votes after the statutory hour for closing the polls shall vote only by casting a provisional ballot if the voting hours have been extended by a court order.

Any interested person may make written suggestions or comments on this proposed amendment through January 27, 2004. Such written suggestions or comments should be directed to Sandra J. Steinbach, Director of Elections, Office of the Secretary of State, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office by telephone at (515) 281-5823 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa.

Requests for a public hearing must be received by 4:30 p.m. on January 26, 2004.

SECRETARY OF STATE[721](cont'd)

This amendment is intended to implement Iowa Code section 47.1 and Section 302 of the Help America Vote Act of 2002 (Pub. L. 107-252).

The following amendment is proposed.

Amend subrule 21.1(12) to read as follows:

21.1(12) Federal elections.

a. If an emergency occurs that will adversely affect the conduct of an election at which candidates for federal office will appear on the ballot, the election shall not be postponed or delayed. Emergency measures shall be limited to relocation of polling places, modification of the method of voting, reduction of the number of precinct election officials at a precinct and other modifications of prescribed election procedures which will enable the election to be conducted on the date and during the hours required by law.

The primary election held in June of even-numbered years and the general election held in November of even-numbered years shall not be postponed. Special elections called by the governor pursuant to Iowa Code section 69.14 shall not be postponed unless no federal office appears on the ballot.

b. *If a federal or state court order or any other order extends the time established for closing the polls pursuant to Iowa Code section 49.73, any person who votes after the statutory hour for closing the polls shall vote only by casting a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballots cast after the statutory hour for closing the polls shall be sealed in a separate envelope from provisional ballots cast during the statutory polling hours. The absentee and special voters precinct board shall tabulate and report the results of the two sets of provisional ballots separately.*

ARC 3068B

SECRETARY OF STATE[721]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 47.1 and 422E.2(3), the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

These amendments are intended to implement Iowa Code section 422E.2 as amended by 2003 Iowa Acts, chapter 157. Changes made to Iowa Code section 422E.2 in 2003 Iowa Acts, chapter 157, now require the ballot language used in local sales and services tax elections to be taken from the motions or petition requesting the election. These amendments prescribe forms for petitions and motions requesting elections regarding local option taxes for school infrastructure. The purpose of the amendments is to provide a uniform structure for the sources of ballot language for these elections.

Any interested person may make written suggestions or comments on these proposed amendments through January 27, 2004. Such written suggestions or comments should be directed to Sandra J. Steinbach, Director of Elections, Office of the Secretary of State, 321 E. 12th Street, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State's office at (515)281-5823, or in

person at the Office of the Secretary of State, 321 E. 12th Street, Lucas State Office Building, First Floor, Des Moines, Iowa 50319.

Requests for a public hearing must be received by 4:30 p.m. on January 26, 2004.

These amendments are intended to implement Iowa Code section 422E.2 as amended by 2003 Iowa Acts, chapter 157.

The following amendments are proposed.

ITEM 1. Amend paragraph **21.803(1)"a"** to read as follows:

a. Petitions requesting local sales and services tax elections. Petitions requesting local sales and services tax elections for school infrastructure projects shall be filed with the board of supervisors.

(1) The content of the ballot shall be substantially similar to the language on the heading of the petition. Each petition shall include a grid for each person signing the petition to add the person's address (including house number and street name, if any, and city) and the date the person signed the petition. The petition shall also include one of the following headings, as appropriate:

(A) 1. Each petition for imposition of local sales and services taxes for school infrastructure shall include the following heading:

1. A statement in substantially the following form: We, the undersigned eligible electors of _____ County, hereby request imposition (or increase, decrease, or repeal) of a local option sales and services tax for school infrastructure projects.

Rate of tax: _____ % (must be 1% or less).

The tax will be collected beginning on (January 1 or July 1), (year).

The tax will end on (December 31 or June 30), (year).

[NOTE: The tax may be collected for a maximum of ten years. All school infrastructure taxes are repealed by statute on December 31, 2022.]

The revenue collected from this tax will be used for:

(List the intended uses of the tax revenue. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code section 422E.1 as amended by 2003 Iowa Acts, chapter 157.)

2. Each person signing the petition shall add the person's address (including house number and street name, if any, and city) and the date the person signed the petition.

2. Each petition for an increase or a decrease in the rate of a local sales and services tax for school infrastructure shall include the following heading:

We, the undersigned eligible electors of _____ County, hereby request an increase (or a decrease) in the rate of the local option sales and services tax for school infrastructure.

The current rate of the tax is: _____ %.

If approved at this election, the new rate of the tax will be: _____ % (must be 1% or less).

3. Each petition for repeal of a local sales and services tax for school infrastructure shall include the following heading:

We, the undersigned eligible electors of _____ County, hereby request repeal of the local option sales and services tax for school infrastructure.

4. Use change elections shall only be held in the school district in which the use change is proposed. The question shall be presented to the registered voters of the entire school district, even if the school district includes territory in more than one county. Each petition for change in the use of a local sales and services tax for school infrastructure shall

SECRETARY OF STATE[721](cont'd)

specify one school district for which the use change is proposed, and shall include the following heading:

We, the undersigned eligible electors of _____ County, hereby request a change in the use of the local option sales and services tax for school infrastructure in _____ School District.

We propose that the revenue from the tax be used for the following purposes:

(List the intended uses of the tax revenue. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code section 422E.1 as amended by 2003 Iowa Acts, chapter 157.)

(2) and (3) No change.

ITEM 2. Amend paragraph 21.803(1)“b” by adding the following new paragraphs at the end thereof:

The content of the ballot shall be substantially similar to the language of the motion. Motions shall be in substantially the following form:

(1) Motion for imposition of local sales and services taxes for school infrastructure:

The Board of Directors of _____ School District hereby requests imposition of a local option sales and services tax for school infrastructure.

Rate of tax: _____ % (must be 1% or less).

The tax will be collected beginning on (January 1 or July 1), (year).

The tax will end on (December 31 or June 30), (year).

[NOTE: The tax may be collected for a maximum of ten years. All school infrastructure taxes are repealed by statute on December 31, 2022.]

The revenue collected from this tax will be used for:

(List the intended uses of the tax revenue. The use or uses must be among the approved uses of the tax authorized by Iowa Code section 422E.1 as amended by 2003 Iowa Acts, chapter 157.)

(2) Motion for an increase or decrease in the rate of a local sales and services tax for school infrastructure:

The Board of Directors of _____ School District hereby requests an increase (or a decrease) in the rate of the local option sales and services tax for school infrastructure.

The current rate of the tax is: _____ %.

The new rate of the tax will be: _____ % (must be 1% or less).

(3) Motion for repeal of a local sales and services tax for school infrastructure:

The Board of Directors of _____ School District hereby requests repeal of the local option sales and services tax for school infrastructure in _____ County.

(4) Motion for change in the use of a local sales and services tax for school infrastructure:

The Board of Directors of _____ School District hereby requests a change in the use of the local option sales and services tax for school infrastructure for _____ School District.

If a change is approved at this election, the tax will be used for the following purposes:

(List the intended uses of the tax revenue. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code section 422E.1 as amended by 2003 Iowa Acts, chapter 157.)

ITEM 3. Amend subrule 21.803(3), introductory paragraph, to read as follows:

21.803(3) Form of ballot for local sales and services tax for school infrastructure projects. The ballot language for a public measure to impose, to change the rate of, to change the use of or to repeal a local sales and services tax for school infrastructure projects shall be the same in each precinct in the county. The content of the ballot shall be substantially similar to the petition of the board of supervisors or motions of the school district or school districts requesting the election, including the rate of the tax, imposition and repeal date, and the specific purpose or purposes for which the revenues will be expended.

ITEM 4. Amend subrule 21.803(3) by adding the following new paragraph “d”:

d. The ballot for elections to decide a change in the use of the local sales and services tax for school infrastructure shall be as follows:

○ (Insert letter to be assigned by the commissioner.)

SHALL THE FOLLOWING PUBLIC MEASURE

BE ADOPTED? YES

NO

Summary: To authorize a change in the use of the local option sales and services tax for school infrastructure for _____ School District.

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

In the _____ School District, the use of the local option sales and services tax for school infrastructure shall be changed.

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax shall be allocated as follows:

(List the intended uses of the tax revenue. The use or uses must be among the approved uses of the tax that are authorized by Iowa Code section 422E.1 as amended by 2003 Iowa Acts, chapter 157.)

CURRENT USES OF THE TAX:

Revenues from the tax are currently allocated as follows:

(List the current uses of the tax as shown on the ballot at the election at which the tax was imposed.)

ARC 3075B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 76, "Application and Investigation," Iowa Administrative Code.

These amendments:

- Add the on-line HAWK-I application as a valid Medicaid application.
- Update form numbers and add references to the Spanish translations of the Health Services Application and the Notice of Decision, Forms 470-2927(S) and 470-0486(S), respectively. (The HAWK-I application in the Comm. 156 brochure is printed in English on one side and Spanish on the other side.)

All applications for HAWK-I benefits must be screened for potential Medicaid eligibility. When Medicaid eligibility is found, the family is not required to complete another application form to receive Medicaid benefits. The HAWK-I program is implementing an on-line application process, so the Department needs to be able to recognize the new on-line application as a valid Medicaid application.

These amendments do not provide for waivers in specified situations because these changes are a benefit to applicants.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 29, 2003, as **ARC 2903B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to the Notice of Intended Action.

The Council on Human Services adopted these amendments on December 10, 2003.

The Department finds that these amendments confer a benefit by giving families more options for filing a Medicaid application. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date is waived.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective January 1, 2004.

The following amendments are adopted.

Amend rule 441—76.1(249A) as follows:

Amend the introductory paragraph and first unnumbered paragraph as follows:

441—76.1(249A) Application. An application for family medical assistance-related Medicaid programs shall be submitted on the Public Assistance Application, Form 470-0462 or Form 470-0466 (Spanish); the Health Services Application, Form 470-2927 or Form 470-2927(S); ~~or the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526 Comm. 156; and the Supplement to the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3564 or the HAWK-I Electronic Application Summary and Signature Page, Form 470-4016.~~ The Health Services Application, Form 470-2927 or Form 470-2927(S), shall be used for persons applying for assistance under the medically needy program as provided at 441—subrule 75.1(35).

An application for SSI-related Medicaid shall be submitted on the Health Services Application, Form 470-2927 or Form 470-2927(S). The Health Services Application, Form 470-2927 or Form 470-2927(S), shall be used for per-

sons applying for assistance under the medically needy program as provided at 441—subrule 75.1(35).

Amend the third unnumbered paragraph as follows:

An application for Medicaid for persons in foster care shall be submitted on Form 470-2927 or Form 470-2927(S), Health Services Application.

Amend subrule **76.1(1)**, paragraph "b," as follows:

b. ~~The Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526 Comm. 156, and the HAWK-I Electronic Application Summary and Signature Page, Form 470-4016,~~ shall be filed with the third-party administrator as provided at 441—subrule 86.3(3). If it appears that the family is Medicaid-eligible, the third-party administrator shall forward the application to the department office responsible for determining Medicaid eligibility.

Amend subrule **76.1(2)**, paragraph "c," as follows:

c. When a ~~Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526 Comm. 156, or HAWK-I Electronic Application Summary and Signature Page, Form 470-4016,~~ is filed with the third-party administrator and subsequently referred to the department for a Medicaid eligibility determination, the date the application is received and date-stamped by the third-party administrator shall be the filing date.

Amend subrule 76.1(6) as follows:

76.1(6) Right to withdraw the application. After an application has been filed, the applicant may withdraw the application at any time ~~prior to~~ before the eligibility determination. The applicant may request that the application be withdrawn entirely or may, ~~prior to~~ before the date the application is processed, request withdrawal for any month covered by the application process except as provided in the medically needy program in accordance with the provisions of 441—subrule 75.1(35). Requests for voluntary withdrawal of the application shall be documented in the case record and a ~~notice of decision~~ Notice of Decision, Form ~~PA-3102-0 470-0485, 470-0486, 470-0486(S), or PA-3159-0 470-0490,~~ shall be sent to the applicant confirming the request.

[Filed Emergency After Notice 12/16/03, effective 1/1/04]

[Published 1/7/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/7/04.

ARC 3072B

HUMAN SERVICES
DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 514I.5, subsection 8, the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

These amendments:

- Establish a procedure for electronic filing of HAWK-I applications. Under these amendments, applicants will be able to submit information through the HAWK-I Web site. The third-party administrator will mail the applicant a form summarizing the data submitted and requesting the applicant's signature. The date that this signed form is returned will be considered the filing date for the HAWK-I application

HUMAN SERVICES DEPARTMENT[441](cont'd)

(and for the Medicaid application if the family is referred for Medicaid eligibility determination).

- Clarify that only income of the family members who are living together is considered in determining HAWK-I eligibility.

- Remove references to legal custody. Only the physical custody of the child is considered in determining whether the parent and child are “living together” for the purpose of qualifying for HAWK-I coverage.

These amendments do not provide for waivers in specified situations because they confer a benefit on affected families and make technical changes. Families that want to request a waiver can do so under the Department’s general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 29, 2003, as **ARC 2892B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to the Notice of Intended Action.

The HAWK-I Board adopted these amendments on December 15, 2003.

The Department finds that these amendments confer a benefit on the public by expanding the options available for filing applications. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date is waived.

These amendments are intended to implement Iowa Code chapter 514I.

These amendments became effective on January 1, 2004. The following amendments are adopted.

ITEM 1. Amend subrule **86.2(2)**, paragraph “**a**,” subparagraph (2), introductory paragraph, as follows:

(2) Unearned income. The unearned income of all parents, spouses and children under the age of 19 *who are living together in accordance with subrule 86.2(3)* shall be counted. Unearned income is any income in cash that is not gained by labor or service. The available unearned income shall be the amount remaining after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes). Examples of unearned income include, but are not limited to:

ITEM 2. Amend subrule **86.2(3)**, paragraph “**b**,” as follows:

b. Parents. Any parent living with the child under the age of 19 shall be included in the family size. This includes the biological parent, stepparent, or adoptive parent of the child and is not dependent upon whether the parents are married to each other. In situations where the parents do not live together but share joint legal or physical custody of the children, the family size shall be based on the household in which the child spends the majority of the time. If both parents share legal or physical custody equally, either parent may apply ~~for~~ *on behalf of* the child and the family size shall be based on the household of the applying parent.

ITEM 3. Amend subrule 86.3(2) as follows:

86.3(2) Application form. An application for the HAWK-I program shall be submitted on ~~Form 470-3526 Comm. 156, Healthy and Well Kids in Iowa~~(HAWK-I) Application, *or on Form 470-4016, HAWK-I Electronic Application Summary and Signature*, unless the family applies for the Medicaid program first.

a. When an application has been filed for the Medicaid program in accordance with the provisions of rule 441—76.1(249A) and Medicaid eligibility does not exist in accordance with the provisions of rule 441—75.1(249A), or the family must meet a spenddown in accordance with the provi-

sions of 441—subrule 75.1(35) before the child can attain eligibility, the Medicaid application shall be used to establish eligibility for the HAWK-I program in lieu of the ~~Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526 Comm. 156, or Form 470-4016, HAWK-I Electronic Application Summary and Signature.~~

b. Applications may be obtained by telephoning the toll-free telephone number of the third-party administrator *or by accessing the Web site at www.hawk-i.org.*

ITEM 4. Amend subrule 86.3(4) as follows:

86.3(4) Date and method of filing. The application is considered filed on the date an identifiable application is received by the third-party administrator ~~unless the family has applied for Medicaid first and a referral is made to the third-party administrator by the county office of the department, in which case, the date the Medicaid application was originally filed with the department shall be the filing date.~~ An identifiable application is an application containing a legible name, address, and signature.

a. *Medicaid applications referred to the HAWK-I program. When the family has applied for Medicaid first and the department local office makes a referral to the third-party administrator, the date the Medicaid application was originally filed with the department shall be the filing date.*

b. *Electronic applications. When an application is submitted electronically to the third-party administrator, the application is considered filed on the date the third-party administrator receives Form 470-4016, HAWK-I Electronic Application Summary and Signature, containing a legible signature.*

[Filed Emergency After Notice 12/16/03, effective 1/1/04]

[Published 1/7/04]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 1/7/04.

ARC 3078B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 185, “Rehabilitative Treatment Services,” Iowa Administrative Code.

These amendments change the requirements for provision of therapy and counseling in various levels of rehabilitative treatment group care service and describe how overpayments are calculated.

The current rules applicable to rehabilitative treatment services contracts specify that a provider bill the Department on a monthly basis. However, the requirements for most group foster care services provide for an average weekly therapy and counseling requirement, the amount of which is dependent upon the level of care (community, comprehensive or enhanced).

In Boys and Girls Home and Family Services, Inc. v. State of Iowa Department of Human Services, No. 3-139/02-0866, June 13, 2003, the Iowa Court of Appeals determined that a formula of only full-week periods consisting of more than one week (i.e., periods of 14, 21 or 28 days) should be used to determine whether a provider is in compliance with the thera-

HUMAN SERVICES DEPARTMENT[441](cont'd)

py and counseling requirements for rehabilitative treatment and supportive services contracts. The Department issued audit guidelines on September 2, 2003, to comply with the decision of the Iowa Court of Appeals.

These amendments clarify the therapy and counseling requirements and their application upon audit by changing the therapy and counseling requirement for group foster care services from a weekly requirement to a calendar monthly requirement, based upon the total number of service days payable to the provider during the calendar month. The amendments also abandon the concept of “contiguous day periods” used in the September 2, 2003, audit guidelines.

Under these amendments, the number of hours of therapy and counseling required to be provided is determined based only upon the number of service days payable to the provider and the level of care (community, comprehensive, or enhanced). Therapy and counseling services and skill development can be provided on any day during the calendar month that the child is present in the facility. A child is considered “present” in a facility if the child is in the facility for at least a portion of the day. Therapy and counseling services may be provided in a setting other than the facility. These amendments will be applied when the Department initiates any rehabilitative treatment and supportive services billing audits on or after December 1, 2003.

Since rehabilitative treatment services are subject to Medicaid coverage and audit requirements, the Department is submitting these policies to the Center for Medicare and Medicaid Services (CMS) for review. While these changes do not require a Medicaid State Plan amendment, CMS approval is required to ensure that there is not a negative fiscal impact on the state.

There are no waiver provisions specifically in these amendments. Individuals may request a waiver under the Department’s general rule on exceptions at 441—1.8(17A, 217).

The Department of Human Services finds that notice and public participation are unnecessary and contrary to the public interest. These amendments have been developed in response to a petition for rule making from providers. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on providers by clarifying service provision and audit requirements. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2).

The Council on Human Services adopted these amendments on December 10, 2003.

These amendments are intended to implement Iowa Code sections 234.6 and 234.38.

These amendments are also published herein under Notice of Intended Action as **ARC 3073B** to allow for public comment.

These amendments became effective on January 1, 2004. The following amendments are adopted.

ITEM 1. Amend subrule **185.13(2)**, paragraph “e,” by adopting the following new subparagraph (3):

(3) The total of the payments determined to be in error in the audit sample shall be divided by the total payments in the reviewed audit sample to calculate the percentage of dollars paid in error. This sample error payment rate shall then be multiplied by the total dollars in the audit universe from which the audit sample was selected to determine the extrapolated overpayment.

ITEM 2. Amend rule 441—185.83(234) as follows:

Amend subrule 185.83(1), introductory paragraph and paragraph “a,” as follows:

185.83(1) Community residential group treatment. Community residential group treatment provides treatment in a facility licensed under 441—Chapter 114, 115, or 116, 481—Chapter 57 or 63, or 643—Chapter 3 for individuals who are unable to live in family situations due to emotional or behavioral disabilities but are capable of interacting in a community environment. This level of treatment requires a level of supervision and intensity of programming required to treat children who present less intensive emotional or behavioral problems. Restorative living and social skills development will be provided to individuals on a daily basis. Therapy and counseling to the child, either on a group or individual basis, shall be provided ~~at least one hour per week in accordance with the requirements of subrule 185.83(5)~~, except for facilities licensed under 441—Chapter 116, or 481—Chapter 57 or 63. Children are provided with 24-hour supervision, 16 hours of which staff is awake.

a. Children receiving community residential group treatment shall receive the following services: restorative living or social skills development and group or individual therapy and counseling. ~~An average of one hour per week of therapy and counseling services shall be provided to each child. Therapy and counseling services shall be provided to each child in accordance with the requirements of subrule 185.83(5).~~

Amend subrule **185.83(2)**, paragraph “a,” as follows:

a. Component services to be provided to individuals in comprehensive residential treatment include: restorative living or social skills development provided several times per day and group or individual therapy or counseling. ~~An average of two hours per week of therapy and counseling services shall be provided to each child. Therapy and counseling services shall be provided to each child in accordance with the requirements of subrule 185.83(5).~~

Amend subrule **185.83(3)**, paragraph “a,” as follows:

a. Children in enhanced residential treatment shall receive the following services: restorative living or social skills development several times per day and group or individual therapy or counseling. ~~An average of three hours per week of therapy and counseling services shall be provided to each child. Therapy and counseling services shall be provided to each child in accordance with the requirements of subrule 185.83(5).~~

Adopt the following new subrule:

185.83(5) Therapy and counseling requirements for community residential group treatment, comprehensive residential treatment, and enhanced residential treatment. The department requires a designated number of hours of therapy and counseling services during each calendar month for children in community residential group treatment, comprehensive residential treatment and enhanced residential treatment, as set forth in this subrule.

a. Community residential group treatment. Each child in community residential group treatment shall receive the number of hours of therapy and counseling services set forth below, based upon the number of days during the calendar month that the child is present in the facility.

Number of days present in facility	Required number of hours
1-6	0
7-13	1
14-20	2
21-27	3
28-31	4

HUMAN SERVICES DEPARTMENT[441](cont'd)

The required number of hours of therapy and counseling may be provided on any day during the calendar month that the child is present in the facility, and may be provided on either a group or individual basis.

b. Comprehensive residential treatment. Each child in comprehensive residential treatment shall receive the number of hours of therapy and counseling services set forth below, based upon the number of days during the calendar month that the child is present in the facility.

Number of days present in facility	Required number of hours
1-3	0
4-6	1
7-13	2
14-20	4
21-27	6
28-31	8

The required number of hours of therapy and counseling may be provided on any day during the calendar month that the child is present in the facility, and may be provided on either a group or individual basis.

c. Enhanced residential treatment. Each child in enhanced residential treatment shall receive the number of hours of therapy and counseling services set forth below, based upon the number of days during the calendar month that the child is present in the facility.

Number of days present in facility	Required number of hours
1-2	0
3-4	1
5-6	2
7-13	3
14-20	6
21-27	9
28-31	12

The required number of hours of therapy and counseling may be provided on any day during the calendar month that the child is present in the facility, and may be provided on either a group or individual basis.

d. Satisfaction of required therapy and counseling with additional services contracted for under rule 441—185.84(234).

(1) If the review organization has authorized additional therapy and counseling services to the child under rule 441—185.84(234), and the provider has failed to meet the therapy and counseling requirements established in this subrule, the additional therapy and counseling services provided when the child is present in the facility shall be applied toward satisfaction of the therapy and counseling requirements established in this subrule.

(2) To the extent that the additional therapy and counseling services are applied to satisfy the therapy and counseling requirements, the provider shall not be entitled to payment for additional therapy and counseling services under rule 441—185.84(234).

ITEM 3. Reserve rules **441—185.123** through **441—185.125**.

ITEM 4. Amend 441—Chapter 185 by adopting the following **new** division:

DIVISION VIII
OVERPAYMENT PROVISIONS

441—185.126(234) Calculation of overpayments. Overpayment amounts shall be calculated by multiplying the unit rate by the number of units of the service for which the provider received payment in error.

185.126(1) Random sampling and extrapolation. When random sampling and extrapolation are used, the overpayment shall be calculated in accordance with paragraph 185.13(2)“e.”

185.126(2) Special provisions for group care. The procedures in this subrule shall be applied to any billing audits initiated on or after December 1, 2003.

a. Determining the amount of overpayment for each child. When the department identifies an overpayment in a community, comprehensive, or enhanced group care service as a result of a provider’s failure to meet the requirements for group care therapy and counseling established in subrule 185.83(5) or failure to meet the requirements for group care skill development as established in subrule 185.83(1), 185.83(2), or 185.83(3), the amount of overpayment for that service for a child during a calendar month shall be calculated as follows:

(1) Multiply the number of days for which the skill development requirement for the client was not met (deficient skill development days) by the unit rate. This is the skill development overpayment amount.

(2) Subtract the number of deficient skill development days from the number of days for which the provider received payment. The number of days remaining, if any, shall be used to determine the number of hours of acceptable therapy and counseling required pursuant to subrule 185.83(5). Any acceptable therapy and counseling provided during deficient skill development days shall be counted toward the therapy and counseling minimum requirement.

(3) Determine whether the amount of acceptable therapy and counseling provided and documented for the client during the calendar month is less than the number of hours of therapy and counseling required for the number of days of group care paid for during the calendar month that remains after adjusting for skill development deficiencies. If so, subtract the amount of acceptable therapy and counseling provided and documented for the client during the calendar month from the number of hours of therapy and counseling required for the remaining number of days of group care paid for the client during the calendar month. Divide this remainder by the required number of hours of therapy and counseling for the remaining number of days of group care paid for the client during the calendar month. The result of this division, expressed as a percentage, is the therapy and counseling deficiency percentage.

(4) Subtract the skill development overpayment amount from the total payment for this service code for this child for this month.

(5) Multiply the remaining payment, if any, by the therapy and counseling deficiency percentage. The result is the therapy and counseling overpayment amount.

(6) Add the skill development overpayment amount to the therapy and counseling overpayment amount. The result is the total overpayment amount for the child for the service code for the calendar month.

b. Determining the total overpayment amount. Add the overpayment amounts for all clients for the service code for each calendar month together to determine the total overpayment amount.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) If extrapolation is not used, this amount is the total overpayment amount.

(2) If random sampling and extrapolation are used, then this amount is used to calculate the sample error payment rate in accordance with subparagraph 185.13(2)“e”(3). The sample error payment rate is then used to calculate the extrapolated overpayment.

c. Examples. The examples set forth below are designed to address only the overpayment calculation with respect to per diem service, and do not address overpayment calculations with respect to per diem maintenance, additional services or optional service. The following examples illustrate the calculation of the overpayment amount for per diem service on rehabilitative and supportive services group foster care audits:

EXAMPLE 1. The provider furnishes comprehensive residential treatment to Child A for the month of July. Child A was discharged on July 27, so the provider may bill for only 26 days of service for July. The provider has mistakenly billed for 31 days of service for July. The provider has billed a per diem rate of \$90 for each day of service, representing a total billing for July of \$2,790 ($\90×31).

Upon audit, it is determined that the provider has properly documented skill development services for each of the days the child was present in the facility and has furnished five hours of therapy and counseling to Child A during July. The overpayment calculation with respect to Child A is as follows:

The erroneous billing for five days of service during the month results in an audit adjustment of \$450 ($\90×5). The requirement for therapy and counseling for the number of days of service for which the provider may bill (26) is six hours, but only five hours of therapy and counseling were provided, resulting in an error rate of 16.67 percent ($((6 - 5) \div 6 = 16.67 \text{ percent})$).

This error rate is then multiplied by the difference between the total amount the provider billed for the month (\$2,790) less the overpayment for the erroneous billing (\$450). There is no audit adjustment for skill development since the required skill development was properly documented. Thus, the overpayment for therapy and counseling is \$390 ($(\$2,790 - \$450) \times 16.67 \text{ percent} = \390).

The total overpayment amount is \$840, the sum of the overpayment for the erroneous billing (\$450) and the overpayment for therapy and counseling (\$390).

EXAMPLE 2. The provider furnishes community residential group treatment to Child B for the month of August. A provider may bill for the day of admittance to the program if service provision requirements for that day are otherwise satisfied. Since Child B was admitted to the program on August 14, Child B was present in the program for 18 days during the month. The provider has billed a per diem rate of \$75 for each day of service, representing a total billing for August of \$1,350 ($\75×18).

Upon audit, it is determined that the provider failed to document the provision of skill development for two of the days during the service period during the month and that the provider has furnished 1.5 hours of therapy and counseling to Child B during August. The overpayment calculation with respect to Child B is as follows:

The failure to document the provision of skill development for two days of service during the month results in an audit adjustment for skill development of \$150 ($\75×2).

The requirement for therapy and counseling for the number of days of service for which the provider may bill (16) is two hours, but only 1.5 hours of therapy and counseling were provided, resulting in an error rate of 25 percent ($((2 - 1.5) \div 2$

$= 25 \text{ percent})$. This error rate is then multiplied by the difference between the total amount billed by the provider for the month (\$1,350) less the overpayment determined for skill development (\$150). Thus, the overpayment for therapy and counseling is \$300 ($((\$1,350 - \$150) \times 25 \text{ percent} = \300).

The total overpayment amount is \$450, the sum of the overpayment for skill development (\$150) and the overpayment for therapy and counseling (\$300).

EXAMPLE 3. The provider furnishes enhanced residential treatment to Child C for the month of September. Child C is present in the program from the beginning of the month until discharged from the program on September 16. Since a provider may not bill for the day of discharge, the provider bills for 15 days of service for the month. The provider has billed a per diem rate of \$100 for each day of service, representing a total billing for September of \$1,500 ($\100×15).

Upon audit, it is determined that the provider has documented the required skill development for the month and has furnished four hours of therapy and counseling to Child C during September. The overpayment calculation with respect to Child C is as follows:

There is no audit adjustment for skill development since the required skill development was properly documented.

The requirement for therapy and counseling for the number of days of service for which the provider may bill (15) is six hours, but only four hours of therapy and counseling were provided, resulting in an error rate of 33.33 percent ($((6 - 4) \div 6 = 33.33 \text{ percent})$. This error rate is then multiplied by the difference between the total amount the provider billed for the month (\$1,500) less the overpayment determined for skill development (\$0). Thus, the overpayment for therapy and counseling is \$500 ($(\$1,500 - \$0) \times 33.33 \text{ percent} = \500).

The total overpayment amount is \$500, the sum of the overpayment for skill development (\$0) and the overpayment for therapy and counseling (\$500).

[Filed Emergency 12/16/03, effective 1/1/04]

[Published 1/7/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/7/04.

ARC 3069B

MANAGEMENT DEPARTMENT[541]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 8.6 and 2003 Iowa Acts, chapter 178, section 27, the Department of Management adopts Chapter 15, "Local Government Innovation Fund Committee," Iowa Administrative Code.

These rules establish the procedures used by the Local Government Innovation Fund Committee for application review, grant and loan awards and to ensure that the proceedings of the Committee are conducted in an orderly manner.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 15, 2003, as **ARC 2872B** and the Adopted and Filed rules were published in the December 24, 2003, Iowa Administrative Bulletin as **ARC 3040B**. These rules are identical to the rules published under Notice of Intended Action and Adopted and Filed.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of the rules, 35 days after publication, should be waived and the rules made

MANAGEMENT DEPARTMENT[541](cont'd)

effective December 10, 2003, upon filing. This will enable the committee to begin operations before the legislative session begins and, if necessary, introduce legislation.

These rules are intended to implement Iowa Code section 8.6 and 2003 Iowa Acts, chapter 178, section 27.

These rules became effective December 10, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 15] is being omitted. These rules are identical to those published under Notice as **ARC 2872B**, IAB 10/15/03.

[Filed Emergency After Notice 12/10/03, effective 12/10/03]
[Published 1/7/04]

[For replacement pages for IAC, see IAC Supplement 1/7/04.]

ARC 3071B

UTILITIES DIVISION[199]

Adopted and Filed Emergency

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, 476.1B, and 476.27, the Utilities Board (Board) gives notice that on December 16, 2003, the Board issued an order in Docket No. RMU-03-15, In re: Crossing of Railroad Rights-of-Way—Insurance Provisions, “Order Granting Joint Petition and Adopting Emergency Rule Making.” The Board is adopting amendments to 199 IAC 42.1(476), 42.9(3), and 42.9(4) and adopting new subrule 42.9(7), proposed in a joint petition for rule making filed by the Small Utility Group and the Iowa Railroads. The amendments add a definition for small utility and adopt insurance requirements for small utilities in connection with crossing of railroad rights-of-way.

The Small Utility Group is comprised of the Iowa Association of Municipal Utilities, the Iowa Association of Water Agencies, the American Water Works Association, the Iowa Rural Water Association, the Iowa Association of Electric Cooperatives, the Rural Iowa Independent Telephone Association, the Iowa League of Cities, and the Iowa Telecommunications Association. The railroads represented by the Iowa Railroads are the Union Pacific Railroad, Burlington Northern Santa Fe Railroad, Appanoose County Community Railroad, Burlington Junction Railroad, Cedar Rapids and Iowa City Railroad, Chicago Central and Pacific Railroad, Iowa Interstate Railroad, Iowa Northern Railroad, Iowa Traction Railroad, Keokuk Junction Railroad, and Omni-Trax-Great Western Railway of Iowa/Council Bluffs Railway.

The Board adopted rules regarding crossing of railroad rights-of-way on May 2, 2003, in Docket No. RMU-02-7. The rules are contained in 199 IAC 42 and are the result of an extensive, multiyear collaboration between the railroads and utilities. However, the railroads and utilities did not reach complete agreement on the content of the rules and, in the order adopting rules, the Board indicated that it anticipated continuing discussions among the railroad and utility groups, with the likelihood that changes to the adopted rules would be proposed. The Board noted that substantial comments were filed regarding the insurance provisions and encouraged the railroads and utilities to resume discussions on these requirements.

Although the majority of the rules adopted in Docket No. RMU-02-7 became effective on July 2, 2003, the Adminis-

trative Rules Review Committee (ARRC) initially voted on June 9, 2003, to delay the effective date of 199 IAC 42.9(3) and 42.9(4) for 70 days. These subrules addressed insurance requirements. The ARRC subsequently approved a session delay for these subrules on August 12, 2003. The ARRC encouraged the utilities and railroads to continue discussions to resolve their differences regarding insurance requirements. Discussions continued, resulting in the joint petition for rule making filed with the Board. The ARRC removed the session delay at its meeting on December 15, 2003.

The amendments resolve the insurance issues between the Small Utility Group and the Iowa Railroads, reducing the coverage required to be carried by small utilities. In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the amendments reflect an agreement between the two groups and the rules have previously been the subject of a multiyear collaboration and rule making.

The Board also finds that, pursuant to Iowa Code section 17A.5(2)“b”(2), the normal effective date of the amendments should be waived and these amendments should be made effective upon filing as they confer a benefit on the small utilities and railroads by implementing their agreement prior to the construction season. No other entities are directly affected by the agreement.

The Board does not find it necessary to adopt a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA, HF2206) is applicable to these rules. In addition, Iowa Code section 476.27 specifically allows a railroad and public utility to agree on different terms.

These amendments became effective December 16, 2003.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, and 476.27.

The following amendments are adopted.

ITEM 1. Amend rule **199—42.1(476)** by adding the following **new** definition in alphabetical order:

“Small utility” means a public utility and all affiliates of the public utility that collectively serve fewer than 20,000 customers. For purposes of this definition, a customer means the party responsible for payment of the utility services. When the specification exhibit is filed with the railroad, the small utility will certify on the specification exhibit that it meets the definition of a small utility as contained in this rule. The specification exhibit will also state that at such time that the small utility no longer meets the small utility definition, that it will have an affirmative duty to so notify the railroad.

ITEM 2. Amend subrule 42.9(3) as follows:

42.9(3) Excess liability coverage with limits of not less than \$5 million, *except that the required limits shall be \$1 million for small utilities for railroad crossings by facilities other than gas or hazardous materials pipelines.*

ITEM 3. Amend subrule 42.9(4) as follows:

42.9(4) Railroad protective liability insurance with a combined single limit of \$4 million per occurrence and \$6 million aggregate, *except that the required limits shall be a combined single limit of \$2 million per occurrence and \$4 million aggregate for small utilities for railroad crossings by facilities other than gas or hazardous materials pipelines. Such coverage shall be required only during the period of construction, repair, or replacement of the facilities and may be provided by a blanket railroad protective liability insurance policy provided that the coverage, including the coverage limits, applies separately to each individual crossing on each individual railroad. Such coverage may be provided by*

UTILITIES DIVISION[199](cont'd)

~~a blanket insurance policy, provided that the coverage, including the coverage limits, applies to each individual crossing on each individual railroad.~~

ITEM 4. Add **new** subrule 42.9(7) as follows:

42.9(7) Before commencing construction of any facility, the public utility must provide to the railroad proof that the

public utility has procured the insurance coverage as required in this rule.

[Filed Emergency 12/16/03, effective 12/16/03]

[Published 1/7/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/7/04.

ARC 3087B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of 2003 Iowa Acts, chapter 145, section 4, the Department of Administrative Services hereby rescinds 401—Chapter 2, “Public Records and Fair Information Practices,” 471—Chapter 2, “Fair Information Practices,” and 581—Chapter 17, “Public Records and Fair Information Practices,” and adopts 11—Chapter 4, “Public Records and Fair Information Practices,” Iowa Administrative Code.

The purpose of this rule making is to consolidate uniform rules on public records and fair information practices by rescinding chapters adopted by the former Departments of General Services, Personnel, and Information Technology that now comprise the Department of Administrative Services and by adopting Chapter 4 under the new agency identification number 11 for the Department of Administrative Services.

Notice of Intended Action was published in the November 12, 2003, Iowa Administrative Bulletin as **ARC 2936B**. There is one change from the Notice. Subrule 4.4(3) was changed to mirror the uniform rules and now reads as follows:

“**4.4(3)** Notice to subject of record and opportunity to obtain injunction. After the custodian receives a request for access to a confidential record, and before the custodian releases that record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian shall give the subject of that confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of that record the specified period of time during which disclosure will be delayed for that purpose.”

These amendments were adopted December 17, 2003.

These amendments will become effective on February 11, 2004.

These amendments are intended to implement Iowa Code chapter 22 and 2003 Iowa Acts, chapter 145.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind 401—Ch 2, 471—Ch 2, 581—Ch 17; adopt 11—Ch 4] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2936B**, IAB 11/12/03.

[Filed 12/17/03, effective 2/11/04]
[Published 1/7/04]

[For replacement pages for IAC, see IAC Supplement 1/7/04.]

ARC 3085B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of 2003 Iowa Acts, chapter 145, section 4, the Department of Administrative Services hereby rescinds 401—Chapter 20, “Waivers and Variances,” 471—Chapter 7, “Waivers,” and 581—Chapter 33, “Uniform Rules for Waivers,” and adopts 11—Chapter 9, “Waivers,” Iowa Administrative Code.

The purpose of this rule making is to consolidate uniform rules on waivers and variances by rescinding chapters adopted by the former Departments of General Services, Personnel, and Information Technology that now comprise the Department of Administrative Services, and by adopting Chapter 9 under the agency identification number 11 for the new Department of Administrative Services.

Notice of Intended Action was published in the November 12, 2003, Iowa Administrative Bulletin as **ARC 2938B**. These amendments are identical to those published under Notice.

These amendments were adopted December 17, 2003.

These amendments will become effective on February 11, 2004.

These amendments are intended to implement Iowa Code chapter 17A and 2003 Iowa Acts, chapter 145.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind 401—Ch 20, 471—Ch 7, 581—Ch 33; adopt 11—Ch 9] is being omitted. These amendments are identical to those published under Notice as **ARC 2938B**, IAB 11/12/03.

[Filed 12/17/03, effective 2/11/04]
[Published 1/7/04]

[For replacement pages for IAC, see IAC Supplement 1/7/04.]

ARC 3083B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of 2003 Iowa Acts, chapter 145, sections 4 and 61, the Department of Administrative Services hereby amends and transfers rules of the former Department of Personnel[581], Chapter 14, “Leave,” to Administrative Services Department[11], Chapter 63, “Leave,” Iowa Administrative Code.

The purpose of this rule making is to transfer rules regarding employee leave from the former Department of Personnel to the new Department of Administrative Services. The single policy change affects when approval of an intermittent or reduced work schedule for an employee on Family and Medical Leave Act leave is at the discretion of the appointing authority and when approval is mandatory, pursuant to 29 CFR 825.203(b).

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Notice of Intended Action was published in the November 12, 2003, Iowa Administrative Bulletin as **ARC 2934B**. These amendments are identical to those published under Notice.

These amendments were adopted December 17, 2003.

These amendments will become effective on February 11, 2004.

These amendments are intended to implement 2003 Iowa Acts, chapter 145, section 58.

The following amendments are adopted.

ITEM 1. Transfer 581—Chapter 14 to 11—Chapter 63.

ITEM 2. Amend 11—Chapter 63 by replacing all internal references to Chapter 14 with references to Chapter 63, and replacing all references to Iowa Code chapter 19A with references to 2003 Iowa Acts, chapter 145.

ITEM 3. Amend subrule 63.4(2) as follows:

63.4(2) Leave may be taken on an intermittent leave basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in ~~paragraphs paragraph~~ *paragraph “a,” “b” or “c”* of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for ~~the circumstance~~ *circumstances* described in paragraph *“b,” “c” or “d”* of subrule 63.4(1) is mandatory if certified by a health care provider.

ITEM 4. Amend the introductory paragraph of 11—63.10(80GA,ch145) by replacing the reference to 581—15.10(19A) with 11—64.10(80GA,ch145).

[Filed 12/17/03, effective 2/11/04]

[Published 1/7/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/7/04.

ARC 3086B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of 2003 Iowa Acts, chapter 145, sections 4 and 61, the Department of Administrative Services hereby rescinds 581—Chapter 15, “Benefits,” and adopts 11—Chapter 64, “Benefits,” Iowa Administrative Code.

Chapter 64 contains updated information on group insurance benefits to conform to current contracting practices. Language regarding organized delivery systems (ODSs) from Chapter 15 is not included in the new chapter because the state no longer contracts with an ODS. A rule has been added to clarify when employees become eligible for benefits.

Rule 11—64.6(80GA,ch145), which pertains to deferred compensation, conforms to the federal Economic Growth and Tax Relief Reconciliation Act of 2001 and 2003 Iowa Acts, chapter 145, section 69. Some language that duplicated language in the plan document has been omitted from the new rule. Most significantly, rule 11—64.6(80GA,ch145) allows more flexibility in distribution options and allows the state to market its plan to other governmental entities.

A subrule has been added to allow reimbursement for temporary living expenses, and the subrule on moving expenses is in compliance with policy by allowing for reimbursement for promotions but not transfers.

Rule 11—64.12(80GA,ch145), regarding tax-sheltered annuities, conforms the plan to the federal Economic Growth and Tax Relief Reconciliation Act of 2001 and clarifies current enrollment and change practices.

Rules concerning dependent care, pretax program, and health flexible spending accounts contain standardized language and clarifications regarding coverage upon termination of employment.

The waiver process set forth in 11—Chapter 9 (published herein as **ARC 3085B**) applies to any request for waiver from these rules.

Notice of Intended Action for these amendments was published in the November 12, 2003, Iowa Administrative Bulletin as **ARC 2937B**. A public hearing was held on December 3, 2003. No comments were received on these amendments. These amendments are identical to those published under Notice.

These amendments were adopted December 17, 2003.

These amendments will become effective on February 11, 2004.

These amendments are intended to implement 2003 Iowa Acts, chapter 145, sections 58, 69 to 74, and 79.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind 581—Ch 15; adopt 11—Ch 64] is being omitted. These amendments are identical to those published under Notice as **ARC 2937B**, IAB 11/12/03.

[Filed 12/17/03, effective 2/11/04]

[Published 1/7/04]

[For replacement pages for IAC, see IAC Supplement 1/7/04.]

ARC 3084B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of 2003 Iowa Acts, chapter 145, section 4, the Department of Administrative Services hereby amends and transfers rules of the former Department of Personnel[581], Chapter 25, “Combined Charitable Campaign,” to Administrative Services Department[11], Chapter 71, “Combined Charitable Campaign,” Iowa Administrative Code.

The purpose of this rule making is to transfer rules regarding the Combined Charitable Campaign to the new Department of Administrative Services[11]. In addition, these amendments:

- Extend the solicitation period end date from September 30 to October 31, and
- Specify that applications from charities to participate in the campaign shall be submitted to the campaign administrator prior to the publicized due date instead of by the previous February 1 annual deadline.

Notice of Intended Action for these amendments was published in the November 12, 2003, Iowa Administrative Bulletin

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

tin as **ARC 2935B**. These amendments are identical to those published under Notice.

These amendments were adopted December 17, 2003.

These amendments will become effective on February 11, 2004.

These amendments are intended to implement 2003 Iowa Acts, chapter 145, section 68.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [transfer 581—Ch 25 to 11—Ch 71, amend 71.1 to 71.6] is being omitted. These amendments are identical to those published under Notice as **ARC 2935B**, IAB 11/12/03.

[Filed 12/17/03, effective 2/11/04]
[Published 1/7/04]

[For replacement pages for IAC, see IAC Supplement 1/7/04.]

ARC 3088B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

These amendments reflect the appropriate wording regarding the new terminology or classification of licenses. Each time the word "conditional" was referenced in Chapter 15, the appropriate new term "Class A" (one-year conditional) or "Class C" (three-year conditional) was inserted to be consistent with Chapter 14.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 15, 2003, as **ARC 2881B**. A public hearing on these amendments was held on November 4, 2003. No one attended the public hearing, and no written comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective February 11, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [15.3(8)"c," 15.4] is being omitted. These amendments are identical to those published under Notice as **ARC 2881B**, IAB 10/15/03.

[Filed 12/16/03, effective 2/11/04]
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ARC 3094B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105, 455B.173, 455B.294, and 455B.299, the Environmental Protection Commission hereby amends Chapter 40, "Scope of Division—Definitions—Forms—Rules of Practice," Chapter 41, "Water Supplies," Chapter 42, "Public Notification, Public Education, Consumer Confidence Reports, Reporting, and Record Maintenance," Chapter 43, "Water Supplies—Design and Operation," Chapter 44, "Drinking Water Revolving Fund," Chapter 81, "Operator Certification: Public Water Supply Systems and Wastewater Treatment Systems," and Chapter 83, "Laboratory Certification," Iowa Administrative Code.

Since January 2000, the U.S. Environmental Protection Agency has promulgated seven major (new or significantly revised) federal rules pertaining to drinking water. These major rule packages include the following: lead and copper rule revisions, radionuclides rule, public notification rule, analytical methods rules (two final rules), arsenic rule, filter backwash recycle rule, and the long-term 1 enhanced surface water treatment rule. In addition, other changes have been made to several existing federal drinking water rules.

States are expected to incorporate these federal rule provisions into state program rules to maintain primacy in the drinking water program. The amendments satisfy this requirement. In addition, various other amendments to the state's drinking water, operator certification and laboratory certification program rules have been made.

The changes are summarized as follows by chapter.

- Chapter 40. The amendments reference other chapters (39, 49, 50, 51, 52, and 82) that pertain to private and public drinking water supply rules in the scope of the division; add a definition for "treatment technique (TT)"; amend the definitions of "comprehensive performance evaluation (CPE)," "disinfection profile," "influenced groundwater (IGW)," "lead free," "maximum residual disinfectant level goal (MRDLG)," "point-of-entry treatment device," "point-of-use treatment device," and "unregulated contaminant"; rescind the definition of "maximum total trihalomethane potential"; add the construction permit fee schedule form number; and change the term "Environmental Protection Division" to "Environmental Services Division" and the term "registered engineer" to "licensed professional engineer."

- Chapter 41. The amendments update analytical methods; require samples collected in the distribution system to meet the nitrate and nitrite maximum contaminant levels (MCL); adopt the new federal arsenic rule; require new sources of water to meet existing MCLs; include the trailing zero on the nitrite MCL to make it consistent with the nitrate MCL and retain the same level of health protection; amend the lead and copper rules to be consistent with the new federal lead and copper rule revisions; revise the organic compound monitoring requirements to be consistent with the new federal rule changes incorporated in the arsenic rule; rescind the organic compound composite sample allowance; rescind the existing total trihalomethane rule and radionuclide rule; adopt the new federal radionuclide rule; only require chlorite to be monitored during use of chlorine dioxide; correct the total trihalomethane and haloacetic acid monitoring trigger levels; rescind the special monitoring rule that contains the unregu-

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lated contaminant and discretionary compound monitoring, and retain the special sodium monitoring requirements; and adopt sampling and analytical methodology for ammonia.

- Chapter 42. The amendments rescind the existing public notification rule and adopt the new federal public notification rule; amend the lead public education language and other public notification requirements as part of the federal lead and copper rule revisions; add definitions of “maximum residual disinfectant level (MRDL)” and “maximum residual disinfectant level goal (MRDLG)” to the consumer confidence rules; amend the consumer confidence report (CCR) rules to include the federal CCR and arsenic rule revisions; include the trailing zero in the nitrate and nitrite rules for clarification of when that language is required in the CCR; amend the reporting requirements for the lead and copper rules in accordance with the new federal lead and copper rule revisions; correct the title of the Standard Methods for the Examination of Water and Wastewater reference; amend the self-monitoring requirements to allow the Department flexibility in assigning the frequency of disinfectant residual measurements in very small systems; and correct the self-monitoring flow categories to include all systems producing less than 0.1 MGD.

- Chapter 43. The amendments waive bottled water monitoring requirements if the water is from a community public water supply that meets all SDWA requirements; require public notification when contamination is detected from a cross connection; prohibit the return of water from steam condensate, engine cooling jackets, water from heat exchange devices, or treated wastewater into a public drinking water system; list sanitary survey components and required timelines for corrective action; allow the Department to require systems currently not operating within design standards to upgrade their systems prior to issuance of a construction permit for another project that does not address the system deficiencies; update the construction standards for public water supplies; change the term “registered engineer” to “licensed professional engineer”; reinstate the construction permit fee; require well construction to be done by a certified well contractor with the appropriate permit; update well-siting requirements; revise separation distances from wells to contamination sources; include the arsenic rule and radionuclide rule requirements for best available treatment technology; adopt the new federal enhanced surface water treatment rule for small and medium surface water and groundwater under the direct influence of surface water systems; update the approved analytical methods; adopt the new federal filter backwash recycle rule; require that systems using chlorine dioxide on an intermittent basis comply with those rules only during periods when chlorine dioxide is in use; correct the MRDL calculation; amend the public notification references and requirements to reflect the new federal public notification rule; allow alkalinity testing for disinfection byproduct precursor removal rules to be performed on site by an approved person rather than only at a certified laboratory; and revise the existing lead and copper rule requirements to reflect the new federal lead and copper rules.

- Chapter 44. The amendments clarify the definition of “DWSRF funds” to allow the use of additional funds to the program should they become available; change the definition of “eligible cost” so that the public water system can begin work on the project more quickly; update two references to the EPA DWSRF program rules; and correct the division’s name.

- Chapter 81. The amendments include the statutory definition components in the definition of a “plant”; correct

the address to which the fees must be submitted; include on-site review of an applicant’s capabilities as part of the oral examination process; require an applicant who is granted certification through an oral examination and subsequently allows the applicant’s certification to lapse to reapply for certification and meet the existing experience and education eligibility requirements; waive the requirement for an operator previously certified under the oral examination rules to fail two written examinations when reapplying for certification; require an operator who has allowed the operator’s certification to lapse to meet all existing education and experience eligibility requirements upon reapplication for certification; identify the two-year CEU period as each odd-numbered year; require any applicant who has had an operator certificate revoked to meet all existing education and experience eligibility requirements upon reapplication; and require any entity holding courses in Iowa for which CEU credit is offered for water treatment, water distribution, or wastewater to allow one staff member of the Department to audit the training and receive all training materials at no cost to the Department.

- Chapter 83. The amendments include certified laboratory requirements for the solid waste and contaminated sites programs; update the definition of a performance evaluation sample; restructure the fees that support the laboratory certification program; clarify that a laboratory certified in Iowa through a reciprocal agreement that loses primary certification also immediately loses certification in Iowa; require laboratories to report their method detection levels and other pertinent information for public water supplies upon request by the Department; remove drinking water unregulated and discretionary contaminant requirements; include arsenic and ammonia as parameters in the drinking water program; clarify lead method detection limit requirements in drinking water; clarify performance evaluation sample criteria in the underground storage tank program; and require that a laboratory that has a revoked certificate immediately discontinue analysis and reporting of compliance samples and notify the laboratory’s regulated Iowa clientele and other state agencies of the revoked certification status within three business days.

These chapters and their amendments were reviewed by the water supply technical advisory group at two separate meetings. The group is comprised of individuals representing a wide variety of water supply stakeholders, including professional drinking water organizations, certified operators, certified environmental laboratories, environmental interests, public water systems, consulting engineers, and other state agencies.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 17, 2003, as **ARC 2779B**. Six public hearings were held, and 26 comments were received. The comments have been addressed in a responsiveness summary, which is available from Diane Moles at (515)725-0281.

There are five changes from the Notice as a result of the public comments. Two new items were added (Items 174 and 175), and changes were made to the amendments originally proposed in Items 91, 94, and 153. The changes that were made as a result of the public comments are described as follows:

In Item 91, the catchwords in subrule 43.1(6) were changed to remove the words “prohibition of.” The subrule now reads as follows:

“43.1(6) Return water in public water supply systems. Steam condensate, cooling water from engine jackets, water used in conjunction with heat exchange devices, or treated

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wastewater shall not be returned to the public water supply system.”

In Item 94, the date of the most current version of the standards was changed from 2001 to 2003 in the first sentence of paragraph 43.3(2)“a.” The introductory paragraph of 43.3(2)“a” now reads as follows:

“a. The standards for a project are the Ten States Standards and the American Water Works Association (AWWA) Standards as adopted through 2003 and 43.3(7) to 43.3(9). To the extent of any conflict between the Ten States Stan-

dards and the American Water Works Association Standards and 43.3(7) to 43.3(9), the Ten States Standards, 43.3(2), and 43.3(7) to 43.3(9) shall prevail. Additional standards include the following:”

In Item 153, the proposed fee structure in paragraph 83.3(2)“c” was revised to add multiple programs for the same analytical groups for the inorganic compounds, volatile organic compounds, synthetic organic compounds, and underground storage tank analytical group. The single analyte fee was also corrected. Paragraph “c” now appears as follows:

“c. The applicable fees shall be based on the type of analytical service provided as follows:

ANALYTICAL GROUP	REGULATORY PROGRAM & PARAMETERS ¹	FEE
Asbestos	SDWA	\$400
Basic Drinking Water	SDWA (includes total and fecal coliform bacteria, E. coli, nitrate, nitrite, and fluoride)	\$800
Basic Wastewater	CWA (includes BOD5, cBOD5, total suspended solids, and ammonia)	\$400
Bacteria	CWA (includes total coliform, fecal coliform, enterococci bacteria)	\$800
	SDWA (includes total coliform, fecal coliform, E. coli, and heterotrophic plate count)	\$800
	SDWA & CWA combined	\$1,300
Dioxin	SDWA	\$800
Effluent Toxicity Testing	CWA	\$800
Inorganics, including metals	CWA metals, inorganic compounds, and physical characteristics (\$400 per analyte up to a maximum of \$1,600)	\$400 to 1,600
	SDWA (includes metals, nitrate, nitrite, ammonia, cyanide, fluoride, bromate, bromide, chlorite, total organic carbon)	\$1,600
	SW/CS	\$1,600
	CWA & SDWA combined	\$2,400
	CWA & SW/CS combined	\$2,400
	CWA, SDWA, and SW/CS combined	\$2,800
Radionuclides	CWA	\$400
	SDWA (includes gross alpha, gross beta, photon emitters, radium, strontium, tritium, uranium)	\$400
	SDWA & CWA combined	\$650
Synthetic Organic Chemicals (SOC)	CWA	\$1,600
	SDWA	\$1,600
	SW/CS	\$1,600
	CWA & SDWA combined	\$2,400
	CWA & SW/CS combined	\$2,400
	CWA, SDWA, and SW/CS combined	\$2,800
Volatile Organic Chemicals (VOC)	CWA	\$1,600
	SDWA	\$1,600
	SW/CS	\$1,600
	CWA & SDWA combined	\$2,400
	CWA & SW/CS combined	\$2,400
	CWA, SDWA, and SW/CS combined	\$2,800
Underground Storage Tank Program Methods (UST)	OA1 and OA2 for UST, CWA, & SW/CS programs	\$1,600
	OA1, OA2, PAH, and Air Gas for UST, CWA, & SW/CS programs	\$2,000
Other analyte ²	SDWA, CWA, UST, or SW/CS	\$400 per analyte

¹ CWA: Analysis of wastewater samples for the federal Clean Water Act.

SDWA: Analysis of drinking water samples for the federal Safe Drinking Water Act.

SW/CS: Analysis of water, soil, or solid samples for the Solid Waste or Contaminated Sites programs.

UST: Analysis of water and soil samples for the Underground Storage Tank program.

² The fee for an additional analyte may be charged at the discretion of the appraisal authority.”

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In Item 174, the date of the current version of the design standards was updated from 1997 to 2003 in the definition of "Ten States Standards" in rule 567—40.2(455B).

In Item 175, in subrule 81.14(1), for those certified operators holding both a water treatment and a water distribution certification, the split between the required CEUs was corrected to read that no less than 25 percent of the required CEUs may be earned in any one area.

These amendments are intended to implement Iowa Code section 17A.3(1)"b," chapter 455B, division III, parts 1 and 5, sections 455B.211 to 455B.224, and chapter 272C.

These amendments will become effective on February 11, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 40 to 44, 81, 83] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2779B**, IAB 9/17/03.

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ARC 3074B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 218.4, the Department of Human Services amends Chapter 28, "Policies for All Institutions," Iowa Administrative Code.

This amendment clarifies the fiscal procedure used in applying credits due to counties from a state institution or institutional program. Most Department institutions are funded from the state general fund, and federal and county payments for institutional care are credited to the general fund. However, a few institutions (the state resource centers and the "dual diagnosis" unit at Mt. Pleasant) are funded through a separate institutional fund. The institutional fund includes the county and federal payments for care at the institution and a minimal state appropriation for costs that are not covered by the institution's Medicaid reimbursement. These are termed "net budgeting" institutions.

The current rule allows a county that has credit from an institution not under net budgeting to apply the credit to an outstanding balance at an institution that is under net budgeting. This process requires the transfer of funds from the state general fund to an institutional fund. The Iowa Constitution, Article III, Section 24, does not allow state agencies to transfer moneys from the state general fund unless the legislature has made a specific appropriation for that purpose or has otherwise given the agency authority to make such a transfer. Under this amendment, county options are to apply the credit at other non-net budgeting institutions or file a claim to the State Appeal Board to obtain a refund.

This amendment does not provide for waivers in specified situations because the Department does not have the authority to waive this provision.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on July 9, 2003, as

ARC 2609B. The Department received one comment on the amendment from Polk County Health Services, recommending that the Department terminate the Notice of Intended Action and seek a legislative solution. The Department agrees that a statutory change would make the current policy lawful, but until that change occurs the rules must conform with the laws currently in effect. This amendment is identical to the Notice of Intended Action.

The Council on Human Services adopted this amendment on December 10, 2003.

This amendment shall become effective March 1, 2004.

This amendment is intended to implement Iowa Code section 218.78.

The following amendment is adopted.

Amend subrule **28.13(2)**, paragraph "c," as follows:

c. Any remaining credit, after application to the patient's or resident's account and to the same institution that generated the credit, shall be applied to an outstanding balance at another state institution.

(1) If a credit generated by an institution or institutional program under net budgeting is to be applied to an institution or institutional program not under net budgeting, then a transfer of funds shall be made from the applicable institutional fund or institutional program under net budgeting to the state general fund.

(2) If a credit generated by an institution that is not under net budgeting is to be applied to an institution or institutional program under net budgeting, then a transfer will be made from the state general fund to the applicable net budgeting institutional fund the county may seek a refund by filing a claim to the state appeal board pursuant to 543—Chapter 3, or the county may allow the credit to remain outstanding until the county has an additional debt at a state institution or institutional program that is not under net budgeting.

(3) If a credit generated by an institution or institutional program under net budgeting is to be applied to another institution or institutional program under net budgeting, then the transfer of funds between the applicable net budgeting funds or programs shall be made through an accounting journal entry.

[Filed 12/16/03, effective 3/1/04]
[Published 1/7/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/7/04.

ARC 3076B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

Iowa Code section 237A.29 requires the Department to impose sanctions on child care providers that receive Child Care Assistance funding by fraudulent means. The statute sets the potential sanctions and the factors the Department must consider in imposing a sanction. Sanctions may include a review of the provider's billing records, suspension from receipt of Child Care Assistance payments, or ineligibility to participate in Child Care Assistance.

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The statute also requires sanctioned providers to report the names and addresses of the children receiving care so that the Department may notify the families. If the provider does not comply, the statute permits the Department to seek an injunction to prevent the provider from operating. If the sanction involves suspension or termination of payment, the Department may not impose the sanction before the affected families are informed and must assist families in locating replacement child care upon request.

These amendments:

- Define how the Department will determine what sanction to impose on a provider that has committed fraud.
- Remove obsolete references to family and group child care homes. Registration categories for child care provided in a family home were amended in **ARC 2085B** published in the Iowa Administrative Bulletin on October 30, 2002.

These amendments do not provide for waivers in specified situations because sanction provisions are set by statute and the Department has no authority to waive them. A provider that is sanctioned may appeal that decision in accordance with rules 441—7.5(17A) and 441—7.8(17A).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 29, 2003, as **ARC 2893B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on December 10, 2003.

These amendments shall become effective March 1, 2004.

These amendments are intended to implement Iowa Code sections 237A.20 and 237A.3A.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 170 preamble, 170.1 to 170.9] is being omitted. These amendments are identical to those published under Notice as **ARC 2893B**, IAB 10/29/03.

[Filed 12/16/03, effective 3/1/04]
[Published 1/7/04]

[For replacement pages for IAC, see IAC Supplement 1/7/04.]

ARC 3077B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code sections 234.6 and 600.22, the Department of Human Services amends Chapter 201, "Subsidized Adoptions," Iowa Administrative Code.

This amendment changes the application of policies governing eligibility for adoption subsidies that were adopted in **ARC 2900B** and published in the Iowa Administrative Bulletin on October 29, 2003. The effective date for those amendments was to have been January 1, 2004, but was delayed 70 days by the Administrative Rules Review Committee. This amendment is intended to address issues raised by the Committee.

Several restrictions on subsidy allowances for child care expenses were adopted in **ARC 2900B**, including limiting child care to special programs to meet a child's special needs,

not allowing child care subsidy for children receiving "difficulty of care" maintenance payments, requiring adoptive families to apply for and accept Child Care Assistance before receiving subsidy funds for child care, and limits on payments.

This amendment "grandfathers in" families that are approved for a special services child care subsidy as of January 1, 2004. These families will continue to receive a subsidy for child care, regardless of whether they would qualify under the rules adopted in **ARC 2900B**. The only limitation imposed on these families under this amendment is the maximum amount of child care subsidy, which may not exceed the payment limit for the Child Care Assistance Program that applies to the child's age and type of care.

This amendment does not provide for waivers in specified situations. Families desiring a waiver may request an exception under rule 441—1.8(17A,217).

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because the Department has already solicited comments on this issue through Notice of Intended Action in **ARC 2701B**, published in the Iowa Administrative Bulletin on August 20, 2003. This amendment is an outgrowth of comments received at that time.

The Council on Human Services adopted this amendment on December 10, 2003.

This amendment is intended to implement Iowa Code sections 234.6, 237A.13, and 600.17 through 600.23.

This amendment shall become effective March 10, 2004, to coincide with the delayed effective date for **ARC 2900B**.

The following amendment is adopted.

Amend subrule 201.3(3) as follows:

201.3(3) Maintenance *and child care* subsidies for children who were determined to be eligible before January 1, 2004, shall continue unless one of the conditions for termination defined in 441—201.7(600) is present. *The child care subsidy payment shall not exceed the applicable reimbursement rate under the child care assistance program as specified in 441—subrule 170.4(7).*

[Filed Without Notice 12/16/03, effective 3/10/04]
[Published 1/7/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/7/04.

ARC 3080B**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 99B.13, the Department of Inspections and Appeals hereby amends Chapter 104, "Amusement Devices," and adopts new Chapter 105, "Registered Amusement Devices," Iowa Administrative Code.

The adopted amendments implement 2003 Iowa Acts, chapter 147, an Act relating to the registration of electrical and mechanical amusement devices. The amendments: require that all amusement devices be registered annually with the Department of Inspections and Appeals; impose a \$25 per device registration fee; require all manufacturers, manufacturers' representatives, and distributors of amusement de-

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vices to register annually and pay an annual \$2,500 registration fee; set out penalties for violations; and make corresponding technical changes to Chapter 104 to bring it into compliance with the requirements of 2003 Iowa Acts, chapter 147.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 29, 2003, as **ARC 2912B**. A public hearing on the amendments was held November 19, 2003, at which time the Department received comments from several individuals. Additional comments were presented to the Department throughout the public comment period. The Department considered the comments and made several technical changes to the amendments in response to the public input. Included in the changes are clarifications in definitions, as well as in the process used to register manufacturers, manufacturers' representatives, and distributors.

These amendments are intended to implement Iowa Code chapter 99B and 2003 Iowa Acts, chapter 147.

These amendments will become effective February 11, 2004.

The following amendments are adopted.

ITEM 1. Amend rule **481—104.1(10A,99B)** by adding the following **new** definition in alphabetical order:

“Prize” means a ticket(s) or token(s) that is dispensed by an amusement device as an award for use and that is worth up to \$5 in merchandise.

ITEM 2. Amend rule **481—104.3(99B)** by adding the following **new** numbered paragraph “5”:

5. Amusement devices designed or adapted to facilitate gambling.

ITEM 3. Amend subrule **104.4(3)** by adding the following **new** paragraphs “f” and “g”:

f. If the entire amount of the ticket or token issued by the amusement device is not redeemed for merchandise, the balance shall not be redeemed for cash.

g. Tickets or tokens shall only be redeemed on the premises where the amusement device is located and only for merchandise sold in the normal course of business on the premises.

ITEM 4. Amend rule **481—104.6(99B)**, numbered paragraph “1,” as follows:

1. Conviction for illegal gambling ranging from a serious misdemeanor to a class “C” felony, fines of up to \$10,000, or confinement up to ten years under the provisions of Iowa Code chapter 725.

ITEM 5. Adopt the following **new** chapter:

CHAPTER 105

REGISTERED AMUSEMENT DEVICES

481—105.1(10A,99B) Definitions. Definitions in rule 481—104.1(10A,99B) are incorporated by reference in this chapter. In addition, the following definitions apply to the possession and use of registered amusement devices.

“Distributes” means to deliver, to provide or to otherwise make available in Iowa amusement devices required to be registered in accordance with these rules.

“Operation” means that a registered amusement device is made available for use by the public or made available for use on the premises of a social or charitable organization.

“Organization” means an entity that meets the requirements of Iowa Code section 99B.7(1)“m.”

“Owner” means any person who owns an operable registered amusement device. Each registered amusement device

shall be registered in accordance with these rules before the device is made available for use by a member of the public or for use on the premises of a social or charitable organization.

“Person” means a person as defined by Iowa Code section 4.1.

“Premises” means a location where one or more registered amusement devices are available for public use.

“Prize” means a ticket(s) or token(s) that is dispensed by a registered amusement device as an award for use and that is worth up to \$5 in merchandise.

“Registered amusement device” means an electrical and mechanical amusement device in operation subject to registration by the department pursuant to Iowa Code section 99B.10 as amended by 2003 Iowa Acts, chapter 147, section 1(4), and includes both the external and internal components. Any change in the registered amusement device, including the external and internal components of the registered amusement device, constitutes a new registered amusement device for which registration by the owner is required. The word “change” as used herein does not include repairs or replacement of parts that do not change or alter the operation of the device as originally registered by the owner. If the repairs or replacement parts alter the operation of the device as originally registered, then the device must be re-registered before it is made available for operation.

“Registered amusement device distributor” means any person who distributes an amusement device required to be registered in accordance with these rules, whether by sale, lease, or any other arrangement or contract, written or oral, whereby an amusement device required to be registered in accordance with these rules is made available for operation in Iowa. For purposes of this definition, a social or charitable organization licensed under Iowa Code chapter 99B is not a distributor unless the organization is engaged in the business of distributing registered amusement devices. A registered amusement device distributor is required to register all machines in operation owned by the distributor.

“Registered amusement device manufacturer” means a person engaged in business in this state who originally produces registered amusement devices or individual components for use in registered amusement devices.

“Registered amusement device manufacturer’s representative” means a person engaged in business in this state who promotes or sells registered amusement devices or individual components for use in a registered amusement device on behalf of a registered amusement device manufacturer.

481—105.2(99B) Registered amusement device restrictions. A registered amusement device may be owned or possessed by any person at any location, subject to the limitations set forth in subrule 105.6(4). The registered amusement device shall be registered in accordance with these rules and shall comply with all of the requirements of Iowa Code section 99B.10 as amended by 2003 Iowa Acts, chapter 147, section 1, and 481—104.2(99B). The registered amusement device shall not be designed or adapted to facilitate gambling. If the department, or the department’s designee, determines that a registered amusement device is noncompliant with the requirements of this chapter or any other provision of Iowa law, the device may be subject to seizure, and any registration associated with the device, including the registration of the manufacturer, manufacturer’s representative, or the distributor, may be revoked.

481—105.3(99B) Prohibited registered amusement devices. The following devices are prohibited:

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1. Amusement devices registered in violation of statutory or regulatory requirements governing such devices.
2. Registered amusement devices that are prohibited by 481—104.3(99B).
3. Any registered amusement device that does not conform to the requirements in these rules or Iowa Code chapter 99B as amended by 2003 Iowa Acts, chapter 147.
4. Any registered amusement device designed or adapted to facilitate gambling.

481—105.4(99B) Prizes. Prizes may be awarded for use of a registered amusement device, but only in conformance with 481—104.4(99B). All prizes awarded must be in conformance with each of the requirements imposed by 481—104.4(99B).

481—105.5(99B) Registration by a manufacturer, manufacturer's representative, or distributor. A person engaged in business in Iowa as a registered amusement device manufacturer, a registered amusement device manufacturer's representative or a registered amusement device distributor shall be registered with the department prior to engaging in the business in Iowa. A person shall register under each of the categories that applies to the business to be conducted in Iowa and shall pay the \$2,500 fee for each category of registration.

105.5(1) Each person who registers with the department shall pay an annual registration fee of \$2,500.

105.5(2) Registration forms are available from the Department of Inspections and Appeals, Social and Charitable Gambling Unit, Lucas State Office Building, Des Moines, Iowa 50319-0083. Persons required to register pursuant to these rules may register electronically at the following Web site: <https://www.egov.state.ia.us/gmms/>.

105.5(3) If registration information changes, the person shall notify the department in writing or electronically of the changes within ten working days.

105.5(4) Registration fees are nonrefundable.

481—105.6(99B) Registration of registered amusement devices. Each owner of an amusement device subject to registration by the department pursuant to Iowa Code section 99B.10 as amended by 2003 Iowa Acts, chapter 147, section 1(4), shall obtain a registration. A registration issued pursuant to Iowa Code chapter 99B is required to offer a registered amusement device for use. Upon the transfer of ownership of a registered amusement device, the new owner shall obtain a new registration for the registered amusement device.

105.6(1) Each owner of an amusement device subject to the registration requirements imposed by this chapter shall register the device before it is made available for operation. Each new owner is required to obtain a new registration for the registered amusement device immediately upon taking possession of the registered amusement device.

105.6(2) Upon receipt of an application and a fee of \$25 for each registered amusement device, the department shall issue an annual registration tag, which shall be valid for a period of one year from the date of issuance.

Application forms are available from the Department of Inspections and Appeals, Social and Charitable Gambling Unit, Lucas State Office Building, Des Moines, Iowa 50319-0083. The application form shall contain all information required by the department.

Applicants may also apply electronically for registration tags at the following Web site: <https://www.egov.state.ia.us/gmms/>.

The registration tag shall be prominently displayed on the front of the registered amusement device in such manner as to be clearly visible to the general public.

Any changes to the information provided on the application, including but not limited to changes in ownership, registered amusement device location, and the cessation of business in this state, shall be reported to the department in writing or electronically within ten working days.

Registration fees are nonrefundable.

105.6(3) A registered amusement device must be obtained from a registered amusement device manufacturer, a registered amusement device manufacturer's representative or a registered amusement device distributor that is registered with the department pursuant to 2003 Iowa Acts, chapter 147, section 2, and this chapter. The owner of the registered amusement device shall exercise due diligence in ensuring that the amusement device is compliant with these rules and all laws governing such devices. Upon request by the department or the department's designee, manufacturers, manufacturers' representatives, and distributors registered with the department shall be required to permit inspection of any amusement device and shall make available for inspection all records, documents, and agreements pertaining to the amusement device. Upon request by the department or the department's designee, any owner of a registered device shall be required to permit an inspection of the registered device and shall make available for inspection all records, documents, and agreements pertaining to the amusement device.

105.6(4) A charitable organization shall not permit or offer for use more than four registered amusement devices at any single premises. All other persons shall not permit or offer for use more than two registered amusement devices at any single premises.

481—105.7(99B) Violations. Failure to comply with the limitations imposed on the use and possession of registered amusement devices in Iowa Code chapter 99B as amended by 2003 Iowa Acts, chapter 147, may result in the following:

1. Conviction for illegal gambling may result under the provisions of Iowa Code chapter 725.
2. Suspension or revocation of a wine or beer permit or of a liquor license may result under the provisions of Iowa Code chapter 123.
3. Property may be forfeited under the provisions of Iowa Code chapter 809.
4. Violation of any laws pertaining to gambling may result in revocation of a registration.
5. The department may revoke a registration or refuse to issue a registration for cause.
6. A registration may be revoked if the registrant or agent of the registrant violates or permits a violation of Iowa Code chapter 99B as amended by 2003 Iowa Acts, chapter 147.
7. A registration may be revoked upon the violation of any rule adopted by the department under this chapter.
8. A registration may be revoked if the registrant or an agent of the registrant engages in any act or omission that would have permitted the department to refuse to issue a registration under Iowa Code chapter 99B as amended by 2003 Iowa Acts, chapter 147.

9. The registration of a registered amusement device may be revoked upon evidence of noncompliance with any laws or rules governing such devices.

The period for revocation or refusal to issue or both shall not exceed two years.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

481—105.8(10A,99B) Appeal rights. Decisions to refuse to issue a registration or to revoke a registration by the department may be appealed in accordance with the procedures set out in 481—Chapter 10. The refusal to issue a registration or the notice of revocation shall be in writing and state the specific grounds for the action. When an appeal is received, the status of the registration is governed by the following standards:

105.8(1) No registration will be issued when a new application is denied.

105.8(2) A previously issued registration remains effective until a final agency decision is issued.

These rules are intended to implement Iowa Code chapter 99B and 2003 Iowa Acts, chapter 147.

[Filed 12/17/03, effective 2/11/04]

[Published 1/7/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/7/04.

ARC 3095B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Adopted and Filed

Pursuant to the authority of Iowa Code section 97B.4 and 2003 Iowa Acts, chapter 145, section 170, the Iowa Public Employees' Retirement System (IPERS) hereby amends 581—Chapter 21, "Iowa Public Employees' Retirement System"; rescinds 581—Chapter 22, "Federal Social Security"; and adopts the following: 495—Chapter 1, "Organization," Chapter 2, "Investment Board," Chapter 3, "Benefits Advisory Committee," Chapter 17, "Public Records and Fair Information Practices," Chapter 19, "Declaratory Orders," Chapter 22, "Federal Social Security," Chapter 26, "Appeals and Contested Cases—Proceedings," Chapter 30, "Petitions for Rule Making," Chapter 31, "Agency Procedure for Rule Making," Chapter 32, "Qualified Benefits Arrangement," and Chapter 33, "Uniform Rules for Waivers," Iowa Administrative Code.

These amendments create a new chapter structure for IPERS administrative rules pursuant to action by the General Assembly in 2003. During the next year IPERS intends to review, rewrite as necessary, and move the administrative rules that are currently found in 581—Chapter 21 into [495].

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 12, 2003, as **ARC 2926B**.

A public hearing was held on December 2, 2003. No one attended the public hearing and no written comments were received. These amendments are identical to those published under Notice.

These amendments were prepared after consultation with the IPERS legal, benefits, investments and operational units and the members of the Investment Board and the Benefits Advisory Committee.

There are no waiver provisions included in the new rules other than those specifically identified in Chapter 33.

These amendments are intended to implement Iowa Code chapter 97B as amended by 2003 Iowa Acts, chapter 145, sections 170 to 181.

These amendments will become effective February 11, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [rescind 581—21.1, 21.9, 21.32, 21.33, Ch 22; adopt 495—Chs 1 to 3, 17, 19, 22, 26, and 30 to 33] is being omitted. These amendments are identical to those published under Notice as **ARC 2926B**, IAB 11/12/03.

[Filed 12/17/03, effective 2/11/04]

[Published 1/7/04]

[For replacement pages for IAC, see IAC Supplement 1/7/04.]

ARC 3091B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.19(1), the Natural Resource Commission hereby amends Chapter 33, "Resource Enhancement and Protection Program: County, City, and Private Open Spaces Grant Programs," Iowa Administrative Code.

The Department is adopting a new rule establishing a public communications component for projects receiving funding through Iowa's Resource Enhancement and Protection (REAP) Program. The purposes of the public communications component are to increase awareness of the availability of new public resources and increase awareness of the impacts of REAP projects in local communities. Additionally, references to the state conservation and outdoor recreation plan are added. The conservation and outdoor recreation plan is updated periodically and is therefore more appropriate for the evaluation of projects seeking REAP funding.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 29, 2003, as **ARC 2911B**. No comments were received during the comment period or at the public hearing held November 19, 2003. Minor changes were made in Items 3, 5 and 7 to restore consideration of the open spaces plan in grant requests.

These amendments are intended to implement Iowa Code sections 455A.15 through 455A.21.

These amendments will become effective February 11, 2004.

The following amendments are adopted.

ITEM 1. Amend subrule 33.5(1) as follows:

33.5(1) Any project submitted from a city or county for grant consideration *or for the private cost-sharing program* must first have been reviewed and commented on by the county resource enhancement committee from the county in which the project is located. Application must include documentation of that review and a summary of any comments made by the committee.

ITEM 2. Amend 571—Chapter 33 by adopting the following **new** rule:

571—33.22(455A) Public communications. Grant recipients shall participate in public communications activities to inform the public of the REAP program and of their particular project. The project will not be considered successfully completed, for purposes of 571—33.15(455A), until evidence is provided to the department REAP coordinator that the fol-

NATURAL RESOURCE COMMISSION[571](cont'd)

lowing requirements have been met. The remaining 10 percent payment of the grant total will not be issued until such evidence has been provided. Evidence includes but is not limited to photographs showing sign placement, newspaper or magazine clippings, printed brochures or fliers available to the public, exhibits for public display and other related materials. Information gathered from site inspections by the department may also be considered acceptable evidence.

33.22(1) Signs. Grant recipients are required to adequately display the 12-inch by 12-inch REAP signs, provided by the department at no charge, on project locations where appropriate so that users of the project can readily see that REAP is at least partially responsible for the project. The REAP signs will be maintained and replaced as necessary as long as the department has signs available.

33.22(2) Dedication ceremony. Grant recipients shall hold a public meeting or event to dedicate the project. Information provided during the event shall include information in regard to the REAP program and its role in supporting the project. This information shall also be provided to local news media by use of a news release. Local and state elected officials shall be invited to attend and participate.

33.22(3) Grants include public communications plan. A description of the public communications plan shall be included in every project submitted as a grant request. Grant recipients shall carry out the plan if their project is funded.

ITEM 3. Amend subrule **33.30(4)**, paragraph “f,” as follows:

f. Relationship to ~~Iowa open spaces plan or the Iowa statewide comprehensive outdoor recreation plan (3), Iowa open spaces protection plan and other current and relevant state, regional and local plans. (4)~~

ITEM 4. Amend subrule **33.30(4)** by rescinding paragraph “g” and adopting the following **new** paragraph in lieu thereof:

g. Quality of public communications plan. (1)

ITEM 5. Amend subrule 33.40(5), introductory paragraph and numbered paragraphs “1” to “7,” as follows:

33.40(5) Criteria for project evaluation. Criteria and weight factors to be used in scoring projects shall include, but are not limited to, the following:

1 a. Quality of site or project, or both. (3)

2 b. Direct ~~recreation~~ recreational benefits. (2)

3 c. Local need. (2)

4 d. Number of people benefited. (2)

5 ~~Relationship to state and local plans (2)~~

6 e. Relationship to ~~Iowa open space protection program (3) state comprehensive outdoor recreation plan, Iowa open spaces protection plan and other current and relevant state, regional and local plans. (4)~~

7 f. Environmental benefits. (2)

g. Quality of public communications plan. (1)

ITEM 6. Amend subrule 33.50(4) as follows:

33.50(4) Project review and selection committee. The director shall appoint a committee to review and score projects. The committee shall include the following: three persons representing the private sector selected from a pool of potential names as submitted by the various private eligible groups; administrator of the ~~forests and forestry division of the department; administrator of the parks, recreation and preserves division of the department; and administrator of the fish and wildlife division of the department~~ *conservation and recreation division of the department, or the administrator's designee; and the bureau chiefs of the department's for-*

estry bureau and parks and preserves bureau or their designees. The committee shall elect its own chairperson from its members. The director shall request a list of candidates for the private sector members from groups eligible to participate in this program.

The committee will report to the director the order in which proposed projects were ranked using criteria as specified in 33.50(5).

ITEM 7. Amend subrule 33.50(5) as follows:

33.50(5) Criteria. The following criteria and their respective weights as ~~defined and described in the 1988 Iowa open spaces protection plan~~ shall be used by the committee, along with other criteria which are determined by the committee to be relevant.

1 a. Level of significance. (3)

2 b. Resource representation. (3)

3 c. Level of threat. (3)

4 d. Relationship to existing public land. (3)

e. *Relationship to state comprehensive outdoor recreation plan, Iowa open spaces protection plan and other current and relevant state, regional and local plans. (3)*

5 f. Rare or unique species or communities. (2)

6 g. Public benefits. (2)

7 h. Tourism and economic development potential. (1)

8 i. Geographic distribution. (1)

9 j. Multiple use potential. (1)

10 k. Available funds relative to project costs. (1)

l. *Quality of public communications plan. (1)*

[Filed 12/17/03, effective 2/11/04]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/7/04.

ARC 3070B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science Examiners hereby amends Chapter 30, “Administrative and Regulatory Authority for the Board of Behavioral Science Examiners,” and Chapter 31, “Licensure of Marital and Family Therapists and Mental Health Counselors”; rescinds Chapter 33, “Discipline for Marital and Family Therapists and Mental Health Counselors,” and adopts a new Chapter 33 with the same title; and amends Chapter 34, “Fees,” Iowa Administrative Code.

These amendments adopt new subrules for the conduct of persons who attend public meetings, adopt criteria for obtaining a duplicate or reissued license, adopt requirements for renewal of a license to practice marital and family therapy or mental health counseling, and amend requirements for notifying the Board of name and address changes. These amendments also adopt a new discipline chapter and modify qualifications for a supervisor acting as an alternate supervisor.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 15, 2003, as **ARC 2859B**. A public hearing was held on November 5, 2003, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

during the public comment period; however, an assistant attorney general noted that, to be consistent with Iowa Code, subrule 31.10(4) should specify that the activities have to be within the licensee's scope of practice and employment responsibilities and that the obligation of being a mandatory reporter applies anytime within those parameters. The Board asked that in subparagraph 31.5(2)"b"(3) the words "possesses qualifications equivalent to a licensed marital and family therapist" not be deleted and that the word "or" be inserted after the word "therapist."

The following changes have been made to the amendments published under Notice:

In subparagraph 31.5(2)"b"(3), the words "possesses qualifications equivalent to a licensed marital and family therapist or" were included. The subparagraph now reads as follows:

"(3) Be an alternate supervisor who possesses qualifications equivalent to a licensed marital and family therapist or satisfies the criteria for clinical membership of the American Association of Marriage and Family Therapy (AAMFT). Proposed alternate supervisors must submit an alternate supervision request form."

In subrule 31.10(4), paragraphs "a," "b" and "c," wording was added to conform to statutory descriptions of when the practitioner is a mandatory reporter, and the word "regularly" was removed to be consistent with Iowa Code. Paragraphs 31.10(4)"a" to "c" now read as follows:

"a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 'e.'

"b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 'e.'

"c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph 'e.'

"Training may be completed through separate courses as identified in paragraphs 'a' and 'b' or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel."

These amendments were adopted by the Board of Behavioral Science Examiners on December 12, 2003.

These amendments will become effective February 11, 2004.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [30.4, 30.6, Ch 30 impl. clause, 31.5, 31.10, 31.13 to 31.15, Ch 33, 34.1] is being omitted. With the exception of the changes noted above, these amendments are

identical to those published under Notice as **ARC 2859B**, IAB 10/15/03.

[Filed 12/12/03, effective 2/11/04]
[Published 1/7/04]

[For replacement pages for IAC, see IAC Supplement 1/7/04.]

ARC 3097B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 328.12, the Department of Transportation, on December 17, 2003, adopted amendments to Chapter 700, "Aeronautics Administration," Chapter 710, "Airport Improvement Program," Chapter 715, "Commercial Air Service Marketing Program," Chapter 716, "Commercial Air Service Airport Infrastructure Program," and Chapter 720, "Iowa Airport Registration," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the November 12, 2003, Iowa Administrative Bulletin as **ARC 2914B**.

Amendments to these chapters were identified as a result of reviews conducted in accordance with Executive Order Number 8. Items 1, 2, 5, and 12 update the office name, address and telephone number and add references to the Web site. Item 3 changes the preapplication deadline for the federal program to the due date requested by the Office of Aviation. This will allow enough time for federal approval prior to the start of the federal fiscal year. Item 4 changes the deadline for the state program to the date specified in the application in order to allow time for inclusion in the annual accomplishment program. Items 6 and 7 remove language that is unnecessarily specific. Item 7 also adds a new subrule identifying that equipment purchases are an ineligible project activity. Items 8 and 17 update the office name. Item 9 rescinds a requirement that is unnecessarily restrictive at the application stage. Item 10 changes the title of Chapter 716. Item 11 updates the purpose to match the new title of the chapter and is updated to reflect the source of funds. Items 13 and 14 create consistency between other administrative rules regarding aviation. Item 15 adds a new subrule to add a maintenance-related facility as an eligible project. Item 16 removes unnecessary language and creates consistency between other administrative rules regarding aviation. Item 18 removes language that is placed in the contract agreement. Item 19 updates the implementation clause for Chapter 716. Items 20 and 23 clarify that Form 300025 is an Iowa form and identifies the office to which the form should be sent. Item 21 clarifies the registration procedure. Item 22 adds language to clarify that FAA inspections of airports certified under 14 CFR Part 139 are accepted in lieu of state inspections. Items 24 and 25 update references to FAA circulars that set out safety standards to reflect the most current editions.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

TRANSPORTATION DEPARTMENT[761](cont'd)

These amendments are intended to implement Iowa Code chapters 328, 329 and 330.

These amendments will become effective February 11, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 700, 710, 715, 716, and 720] is being omitted. These amendments are identical to those published under Notice as **ARC 2914B**, IAB 11/12/03.

[Filed 12/17/03, effective 2/11/04]

[Published 1/7/04]

[For replacement pages for IAC, see IAC Supplement 1/7/04.]

ARC 3096B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on December 17, 2003, rescinded Chapter 718, "General Aviation Hangar

Revolving Loan Fund," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the November 12, 2003, Iowa Administrative Bulletin as **ARC 2913B**.

2003 Iowa Acts, chapter 8, section 7, repealed Iowa Code section 330.2 that established the Aviation Hangar Revolving Loan Fund. Therefore, this chapter is no longer needed.

This amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 330.

This amendment will become effective February 11, 2004. Rule-making action:

Rescind and reserve **761—Chapter 718**.

[Filed 12/17/03, effective 2/11/04]

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